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APPENDIX C

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 1064

GENERAL ELECTRIC COMPANY,

Petitioner,

—against—

NATIONAL LABOR RELATIONS BOARD

and

INTERNATIONAL UNION OF ELECTRICAL, RADIO, AND MACHINE WORKERS, AFL-CIO,

Respondents.

APPENDIX C TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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The original pagination of the Board's Decision and Order is indicated not only in the top righthand corner of each page, but also by a space of several lines in the text and the insertion of the original page number therein.

UNITED STATES OF AMERICA

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

GENERAL ELECTRIC COMPANY,
and
INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO.

Cases Nos. 2-CA-7581-1,
7581-2,
7581-4,
7864 (Post 10-CA-4682).

Decision and Order.

On April 1, 1963, Trial Examiner Arthur Leff issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices within the meaning of the Act, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the Intermediate Report attached hereto. Thereafter, the Respondent, the General Counsel, and the Charging Union filed exceptions to the Intermediate Report and supporting briefs.[1] On May 7, 1964, the Board heard oral argument at

[1] The General Counsel and Charging Union were granted permission to file and did file briefs in reply to the Respondent's exceptions and brief.

Decision and Order.

Washington, D. C. All parties were represented by counsel and participated in the argument.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report and the entire record in the case, including the oral argument, the exceptions, and briefs, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

The Trial Examiner found that Respondent had not bargained in good faith with the Union, thereby violating Section 8(a)(5)[2] and (1) of the Act as evidenced by:

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(a) Its failure timely to furnish certain information requested by the Union during contract negotiations.

(b) Its attempts, while engaged in national negotiations with the Union, to deal separately with Locals on matters which were properly the subject of national negotiations, and its solicitations of Locals separately to abandon or refrain from supporting the strike.

(c) Its presentation of its personal accident insurance proposal to the Union on a take-it-or-leave-it basis.[3]

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[2] Section 8(a)(5) of the Act provides that it shall be an unfair labor practice for an employer "to refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9(a)."

Section 8(d) defines the duty to bargain collectively as "the performance of the mutual obligation of the employer and the representatives of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract . . . ."

[3] For the reasons set forth in his dissent in *Equitable Life Insurance Company*, 133 NLRB 1675, 1677, Member Fanning would not find that Respondent's refusal to bargain in regard to the insurance plan was unlawful. However, he believes that Respondent's take-it-or-leave-it position on June 13 can be properly considered in gauging its overall good faith in negotiations.

(d) Its overall approach to and conduct of bargaining.

We agree with these findings of the Trial Examiner. Because Respondent's defense of its bargaining conduct raises a fundamental question as to the requirements of the statutory bargaining obligation, we have stated for more particular emphasis the reasons why we agree with the Trial Examiner that Respondent did not bargain in good faith with the Union.

In challenging the Trial Examiner's finding that it violated Section 8(a)(5), Respondent argues that an employer cannot be found guilty of having violated its statutory bargaining duty where it is desirous of entering into a collective-bargaining agreement, where it has met and conferred with the bargaining representative on all required subjects of bargaining as prescribed by statute and has not taken unlawful unilateral action, and where it has not demanded the inclusion in the collective-bargaining contract of any illegal clauses or insisted to an impasse upon any nonmandatory bargaining provisions. Given compliance with the above, Respondent further argues that an employer's technique of bargaining is not subject to approval or disapproval by the Board.

Respondent reads the statutory requirements for bargaining collectively too narrowly. It is true that an employer does violate Section 8(a)(5) where it enters into bargaining negotiations with a desire not to reach an agreement with the union,[4] or has taken unilateral action with respect to a term or

[4] *N. L. R. B. v. Reed & Prince Manufacturing Co.*, 205 F. 2d 131, 134 (C. A.

condition of employment,[5] or has adamantly demanded the inclusion of illegal[6] or nonmandatory[7] clauses in the collective-bargaining contract. But, having refrained from any of the foregoing conduct, an employer may still have failed to discharge its statutory obligation to bargain in good faith. As the Supreme Court has said:[8]

> . . . the Board is authorized to order the cessation of behavior which is in effect a refusal to negotiate, *or* which directly obstructs or inhibits the actual process of discussion, *or* which reflects a cast of mind against reaching agreement. (Emphasis supplied.)

Thus, a party who enters into bargaining negotiations with a "take-it-or-leave-it" attitude violates its duty to bargain although it goes through the forms of bargaining, does not insist on any illegal nonmandatory bargaining proposals, and wants to sign an agreement.[9] For good-faith bargaining means more than "going through the motions of negotiating."[10] ". . . the essential thing is rather the serious intent to adjust differences and to reach an acceptable common ground . . ."[11]

Good-faith bargaining thus involves both a procedure for meeting and negotiating, which may be called the externals of collective bargaining, and a bona fide intention, the

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[5] *N. L. R. B. v. Katz*, 369 U. S. 736.

[6] *National Maritime Union*, 78 NLRB 971, 980, enf'd 175 F. 2d 686 (C. A. 2), cert. denied, 338 U. S. 954.

[7] *N. L. R. B. v. Wooster Division of Borg-Warner Corp.*, 356 U. S. 342, 349.

[8] *N. L. R. B. v. Katz, supra*, at 747.

[9] *N. L. R. B. v. Insurance Agents' International Union, AFL-CIO*, 361 U. S. 477, 487.

[10] *N. L. R. B. v. Truitt Mfg. Co.*, 351 U. S. 149, 155 (Frankfurter, J.).

[11] 1 N. L. R. B. Ann. Rep., 85, quoted with approval by the Supreme Court in *N. L. R. B. v. Insurance Agents' International Union, AFL-CIO, supra*, at 485.

presence or absence of which must be discerned from the record.[12] It requires recognition by both parties, not merely formal but real, that "collective bargaining" is a shared process in which each party, labor union and employer, has the right to play an active role.[13] On the part of the employer, it requires at a minimum recognition that the statutory representative is the one with whom it must deal in conducting bargaining

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negotiations, and that it can no longer bargain directly or indirectly with the employees.[14] It is inconsistent with this obligation for an employer to mount a campaign, as Respondent did, both before and during negotiations, for the purpose of disparaging and discrediting the statutory representative in the eyes of its employee constituents, to seek to persuade the employees to exert pressure on the representative to submit to the will of the employer, and to create the impression that the employer rather than the union is the true protector of the employees' interests.[15] As the Trial Examiner phrased it, the employer's statutory obligation is to deal with the employees through the union, and not with the union through the employees.

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[12] *Ibid.*; *N. L. R. B. v. Herman Sausage Co., Inc.*, 275 F. 2d 299, 231 (C. A. 5).

[13] "The basic concepts underlying the Labor Management Relations Act call for utilization of joint efforts at the bargaining table as a substitute for labor strife." *East Bay Union of Machinists Local 1304, U. S. W. v. N. L. R. B.*, 322 F. 2d 411, 415 (C. A. D. C.).

[14] ". . . the duty of management to bargain in good faith is essentially a corollary of its duty to recognize the union." *N. L. R. B. v. Insurance Agents' International Union, AFL-CIO, supra*, at 484-485.

[15] *N. L. R. B. v. Herman Sausage Co., Inc., supra*, at 233; *N. L. R. B. v. Fitzgerald Mills*, 313 F. 2d 260, 268 (C. A. 2).

We do not rely solely on Respondent's campaign among its employees for our finding that it did not deal in good faith with the Union. Respondent's policy of disparaging the Union by means of the communications campaign as fully detailed in the Trial Examiner's Intermediate Report, was implemented and furthered by its conduct at the bargaining table. Thus, the negotiations themselves, although maintaining the form of "collective bargaining," fell short, in a realistic sense, of the concept of meaningful and fruitful "negotiation" envisaged by the Act. As the record in the case reflects, Respondent regards itself as a sort of administrative body which has the unilateral responsibility for determining wages and working conditions for employees, and it regards the union's role as merely that of a kind of advisor for an interested group—the employees. Thus, according to its professed philosophy of "bargaining," Respondent on the basis of its own research and evaluation of union demands, determines what is "right" for its employees, and then makes a "fair and firm offer" to the unions without holding anything back for later trading or compromising. It professes a willingness to make prompt adjustments in its offer, but only if new information or a change in facts indicates that its initial offer is no longer "right." It believes that if its

research has been done properly there will be no need to change its offer unless something entirely unforeseen has developed in the meantime. Simultaneously, Respondent emphasizes, especially to employees, that as a matter of policy it will not be

induced by a strike or a threat of a strike to make any change in its proposals which it believes to be "wrong." This "bargaining" approach undoubtedly eliminates the "ask-and-bid" or "auction" form of bargaining, but in the process devitalizes negotiations and collective bargaining and robs them of their commonly accepted meaning.[16] "Collective bargaining" as thus practiced is tantamount to mere formality and serves to transform the role of the statutory representative from a joint participant in the bargaining process to that of an advisor. In practical effect, Respondent's "bargaining" position is akin to that of a party who enters into negotiations "with a predetermined resolve not to budge from an initial position," an attitude inconsistent with good faith bargaining.[17] In fact Respondent here went even further. It consciously placed itself in a position where it could not give unfettered consideration to the merits of any proposals the Union might offer. Thus, Respondent pointed out to the Union, after Respondent's communications to the employees and its "fair and firm offer" to the Union, that "everything we think we should do is in the proposal and we told our employees that, and we would look ridiculous if we changed now."

In short, both major facets of Respondent's 1960 "bargaining" technique, its campaign among the employees and its conduct at the bargaining table, complementing each other, were calculated to disparage the Union and to impose without substantial alteration Respondent's "fair

[16] The term "bargain collectively" as used in the Act "has been considered to absorb and give statutory approval to the philosophy of bargaining as worked out in the labor movement in the United States." *Telegraphers v. Railway Express Agency*, 321 U. S. 342, 346, quoted with approval in *N. L. R. B. v. American National Insurance Co.*, 343 U. S. 395, 408.

[17] *N. L. R. B. v. Truitt Mfg. Co.*, 351 U. S. 149, 154 (Frankfurter, J.).

and firm" proposal, rather than to satisfy the true standards of good-faith collective bargaining required by the statute. A course of conduct whose major purpose is so directed scarcely evinces a sincere desire to resolve differences and reach a common

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ground. For the above reasons, as well as those elaborated at greater length by the Trial Examiner in his Intermediate Report, we adopt his conclusion that Respondent did not bargain in good faith with the Union, thereby violating Section 8(a)(5) and (1) of the Act.

Our concurring colleague, Member Jenkins, who joins us in finding certain conduct of the Respondent inconsistent with its bargaining obligation under the statute, misreads the majority opinion, and the Trial Examiner's Intermediate Report which we affirm, in asserting that our decision is not based on an assessment of Respondent's conduct, but only on its approach to or techniques in bargaining.

On the contrary our determination is based upon our review of the Respondent's entire course of conduct, its failure to furnish relevant information, its attempts to deal separately with locals and to bypass the national bargaining representative, the manner of its presentation of the accident insurance proposal, the disparagement of the Union as bargaining representative by the communication program, its conduct of the negotiations themselves, and its attitude or approach as revealed by all these factors.

Nothing in our decision bans fact-gathering or any specific methods of formulating proposals. We prescribe

no time-table for negotiators. We lay down no rules as to any required substance or content of agreements. Our decision rests rather upon a consideration of the totality of Respondent's conduct.

In one central point of our colleague's comment, with all respect we believe he is in error. His strictures in relation to our interpretation of the law's restraints on "take-it-or-leave-it" bargaining were decisively answered by the Supreme Court in its review of the nature of the bargaining obligation in *Insurance Agents*:[18]

> . . . the legislative history (of Taft-Hartley) makes it plain that Congress was wary of the position of some unions, and wanted to ensure that they would approach the bargaining table with the same attitude of willingness to reach an agreement as had been enjoined on management earlier. It intended to prevent employee representatives from putting forth the same "take it or leave it" attitude that had been condemned in management.

And in Justice Frankfurter's opinion in *Truitt*[19] upon which our colleague relies, the Justice also wrote:

> . . . it (good faith) is inconsistent with a predetermined resolve not to budge from an initial position.

While we share his objective and that of our dissenting colleague of encouraging a maximum of freedom and experimentation in collective bargaining, when questions are

[18] *N. L. R. B. v. Insurance Agents' International Union, AFL-CIO, supra,* at 487.

[19] *N. L. R. B. v. Truitt Mfg. Co., supra,* at 154.

raised under the law as construed by the courts and the Board concerning the conformity of a specific respondent's course of conduct with the requirements of the law, the Board must apply the law to the totality of that conduct in the interest of preserving and fostering collective bargaining itself. That is what we have sought to do here.

THE REMEDY

We have carefully considered the various exceptions to the Trial Examiner's Recommended Order which were filed by each of the parties. As we think his Recommended Order is appropriately tailored to the violations found and will effectuate the purposes of the Act, we overrule all these exceptions.

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ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the Board hereby adopts as its Order the Order recommended by the Trial Examiner and orders that Respondent, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.[20]

Dated, Washington, D. C., December 16, 1964.

FRANK W. McCULLOCH, *Chairman,*
JOHN H. FANNING, *Member,*
GERALD A. BROWN, *Member,*

(SEAL) NATIONAL LABOR RELATIONS BOARD.

[20] The Board includes as part of its Order the "Armed Forces" provision now appearing in the Notice to All Employees attached as Appendix B to the Trial Examiner's Intermediate Report.

Member Jenkins, concurring:

The fundamental issues in this case have been obscured by slogans and shibboleths which have understandably led my colleagues into deciding issues which in my judgmment are not presented for decision. Moreover, the Board has undertaken to describe the statutory obligation to bargain in good faith by utilizing conclusionary comments which may be justified by the facts in this case but which have such far-reaching implications as to warrant the expression of my individual views designed to limit the reach of this decision.

Stripped of verbiage this case presents the fundamental issue of whether the course of conduct engaged in by the employer during the 1960 contract negotiations which led to an unsuccessful 3 weeks strike, fell below the standard of good-faith bargaining required by Section 8(a)(5) of the Act. Certain specific conduct was alleged as the basis for finding that the Respondent's conduct violated 8(a)(5) and (1) of the Act. This Board has repeatedly held that conduct designed to undermine the Union, or to demonstrate to employees the futility of engaging in collective bargaining through a union, fails to meet the standard of good-faith bargaining. If my colleagues had been content to thus ground their finding in the instant case, I would have no reason to disagree. The record clearly supports their findings with respect to (a) the failure of Respondent to furnish certain information requested by the Union during contract negotiations, (b) the attempts to deal separately with locals on matters which were properly the subject of national negotiations, and (c) the Respondent's importuning of locals to abandon or refrain from support-

ing the strike authorized by the collective-bargaining representative. I share Member Fanning's view that Respondent's presentation of its personal accident

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insurance proposal to the Union on a take-it-or-leave-it basis was not violative of Section 8(a)(5). Within the context of the facts of this case, were the Board to conclude that the foregoing derelictions justify a broad remedial order, I would be able to join and find no fault with the disposition of the case. However, in view of the fact that the majority has gone beyond conduct and indeed concedes that it is not basing its finding of overall bad faith on conduct but rather is basing that finding on an assessment of the Respondent's approach to its duty to bargain in good faith, I am constrained to disavow their comments concerning the employer's bargaining technique.

In effect I read the majority opinion to hold that the Act so regulates a party's choice of techniques in collective bargaining as to make unlawful an advance decision, and a frank communication of that decision, concerning the position from which a party is unwilling to retreat. The majority would apparently find that it is unlawful for a union to present a contract proposal on a take-it-or-leave-it basis since I assume the majority would not apply different standards to unions than to employers. The bargaining technique often employed by unions in support of "area standards" contracts is not significantly different from the technique described as the "firm fair offer" by an employer. I would not find a lack of good-faith bargaining where

either the employer or the union entered the negotiations with a fixed position from which it proposed not to retreat, engaged in hard bargaining to maintain or protect such position, and made no concessions from that position as a result of bargaining. As one member of the Supreme Court has pointed out, good faith is not necessarily incompatible wtih stubbornness or even with what to an outsider may seem unreasonableness.[21]

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The majority states frankly that the holding of a predetermined resolve not to budge from an initial position is incompatible with good-faith bargaining. That statement seems to ignore the language in Section 8(d) of the Act which makes it clear in unequivocal words that "such obligation does not compel either party to agree to a proposal or require the making of a concession." The opinion of my colleagues fails to distinguish between two important concepts, *viz.*, the formulation of a settlement position and the techniques employed in reaching a settlement. The Act does not dictate the methods which a party may choose to utilize in formulating its bargaining position. Indeed, many unions and employers use surveys of one sort or another as a fact-gathering device in advance of bargaining. Moreover, both employers and unions are free from statutory regulation under this Act in formulating the kind of proposal or counter proposal which each will communicate to the other. I know of no decision of this Board which has sought to interpret the statute as requiring either unions or employers to follow a prescribed timetable in

[21] *N. L. R. B. v. Truitt Manufacturing Co.*, 351 U. S. 149, 154-155 (Frankfurter, J.).

communicating the various shifts in position which seem desirable as a matter of self interest. Thus, if either an employer or a union for reasons dictated by self interest chooses to include in a proposal trading items which it is willing later to withdraw or conversely chooses to limit its proposal to items which it will never withdraw voluntarily, the choice is its and not the Board's.

To describe the foregoing in shorthand by evocative terms provides little guidance for either unions or employers. To condemn bargaining techniques as unlawful because of the utilization of what the majority describes as "take it or leave it" is to obfuscate the issue. Basically it is our purpose to examine industrial relations against the realities that exist. It is not our function to require the adoption of a particular

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technique or to condemn the use of a given technique as such. Under circumstances where the overall conduct is designed to destroy the bargaining relationship or to undermine the status of a bargaining representative, it is clear that good-faith bargaining has not occurred. This, however, does not flow from the adoption of a technique or from an effort to gain the supposed advantage of winning acceptance of one's own proposal. There is adequate evidence in this record to support a finding that the Respondent by its course of conduct sought to bypass the Union and deal directly with the employees, to discredit the collective-bargaining representative with which it was obligated to deal and carry on negotiations with others.

Some portions of my colleagues' opinion may be read as holding that the Act was violated because Respondent chose to decide in advance on the proposal which it was willing to make and from which it was unwilling to retreat unless forced to do so by economic pressure which it apparently regarded as a calculated risk. If such an inference be drawn I disavow it. If free collective bargaining is to survive, both employers and unions must remain free of governmental interference with their right to formulate independently the economic positions which each desires to take and to decide without governmental compulsion whether that position shall be conveyed to the other party at the outset, at some mid point, or at the conclusion of negotiations. To do otherwise maximizes governmental construction of the bargain and minimizes the free flow of independent economic judgment essential to a strong, independent trade union movement and a strong, independent entrepreneurial system, both of which are vital to the kind of economy envisaged by the Act which we administer.

Dated, Washington, D. C., Dec. 16, 1964.

HOWARD JENKINS, JR., *Member,*

NATIONAL LABOR RELATIONS BOARD.

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Member Leedom, dissenting in part:

My colleagues have found that the Respondent failed to bargain in good faith with the Union in the 1960 negotiations, both in certain specific respects and generally. Although I agree with the specific violations found, I cannot

justify the bad-faith finding with respect to the Respondent's overall bargaining conduct.

On the issue as to Respondent's overall good or bad faith it should be conceded that there are various approaches to, and tactics in, negotiations that are wholly consistent with the bargaining obligation imposed by the Act; and it seems to me that both management and labor should not be discouraged from seeking new techniques in dealing with the constantly evolving problems with which they are faced across the bargaining table. Consequently we should take care not to create the impression that we view with suspicion novel approaches to, and techniques of, collective-bargaining. This is not an area of sharp disagreement at this Board. Rather it is a question of emphasis: Should the parties be given a wide latitude in devising their bargaining methods, or should there be careful intervention by a regulator? At this time when not only the industrial community, but some labor spokesmen as well are urging less government intervention in industrial relations, it seems to me the emphasis should be on freedom of action in the bargaining process. Very respectible authority seems to agree: "The law of collective bargaining will have little value to the community if the process of logical deduction from prior decisions results in wide divergence between the administrative and judicial rules and the needs of both management and labor."[22]

Notwithstanding the foregoing, I cannot fully accept Respondent's view of the breadth of the bargaining obligation imposed by the Act, nor the limitation it believes the

[22] *Cox and Dunlop, Regulation of Collective Bargaining*, 63 Harvard Law Review, 389, at 405.

law places on those matters which can properly be considered where good or bad faith bargaining is in issue. In both regards

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its construction seems too rigid. I nevertheless believe that both the law and good policy require that this Board not be hypercritical of what goes on at the bargaining table or in a developing situation. In order for collective bargaining to be free and to succeed, the parties themselves must with a minimum of exceptions have the right to resort to such tactics, and to take such positions, as they believe necessary or desirable in dealing with the matters before them. If at each step they must consider the effect of their specific words, actions, and proposals upon some distant tribunal unacquainted with the particular problems in dispute, and with that more subtle distinction, the personalities of the negotiators themselves, they surely lose the flexibility and spontaniety necessary for free, effective bargaining. Thus they are deprived of their right to determine, free of governmental intervention, the substantive terms of their agreement, should one be reached.

No matter how much we may disclaim any intent to compel bargaining to proceed in some set form, the fact that we closely scrutinize what goes on at the bargaining table will necessarily have the effect of directing bargaining into channels which we have in the past approved, for in such channels will lie security in bargaining, if not success.[23]

[23] The majority cites the Supreme Court to the effect that to bargain collectively as used in the Act "has been considered to absorb and give statutory

(Footnote continued on following page)

Whether the substitution of our judgment as to the proper forms and content of bargaining be made directly or indirectly is a difference of no consequence insofar as it interferes with free bargaining and tends to discourage innovation both in tactics and proposals which, as I believe, could be of benefit not only to the parties but to the public as well.[24] Consequently, good policy

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suggests that we leave the parties to their own devices at the bargaining table unless some compelling facts force us into the area of bargaining. As the Supreme Court stated in the *Oliver* case, "The purposes of the Act [Wagner and Taft-Hartley Act] are served by bringing the parties together and establishing conditions under which they are to work out their agreement themselves."[25]

The principal facts are not disputed. Concededly the Respondent did not intend to rid itself of the Union during the 1960 negotiations. Rather it approached the bargaining table fully intending to reach an agreement with the

(Footnote continued from preceding page)

approval to the philosophy of bargaining as worked out in the labor movement in the United States." See footnote 16, *supra*. With this statement I certainly agree and, in fact, am arguing here that this process of working out be permitted to continue with a flexibility capable of meeting new problems as they arise. But if only standards of conduct approved in the past are to have Board approval now and in the future, as seems to be the majority's position, then change will be difficult if not impossible, and industry and labor will be saddled with archaic rules and procedures for their conduct in negotiations.

[24] See, *N. L. R. B. v. Insurance Agents' International*, 361 U. S. 477, 495, where the Court in considering the issue of good faith stated that it "failed to see the relevance whether the practice in question was time honored or whether its exercise is generally supported by public opinion." Further, as the Court points out in its decision at p. 490, Board regulation of tactics in support of negotiations necessarily implies some control over the substantive terms of agreement.

[25] *Local 24 of I. B. of T. C. W. & H. v. Oliver*, 538 U. S. 384, 295 (1959).

Union and to this end engaged in many bargaining sessions running from mid-summer to the late fall of 1960. And the end result was in fact a comprehensive agreement. To be sure, the Respondent in presenting its offer on August 31 took a firm position but that does not in itself demonstrate bad faith.[26] In fact, the Respondent's initial attitude with respect to its offer does not appear to have been appreciably, if any, more intransigent than that of union presenting its proposed changes. However, I find it hard to measure degrees of intransigence and have considerable doubts that balancing it out is of real significance; for whatever may have been the situation at early stages of negotiations, it is clear that as negotiations proceeded the Union backed down considerably and the company acquiesed in a number of changes from its original proposals. Even though the Respondent's changes may not have been all that the Trial Examiner and majority may have wished, I fail to see how their alleged "inconsequential" nature is some evidence of bad faith when Respondent was not obligated to propose or agree to any change at all in its initial offer.

The majority and the Trial Examiner advert to statements by the Respondent and its representatives both at the bargaining table and in employee communications which were highly critical of the Union and its president and some also suggesting an approach to bargaining not wholly in keeping with its statutory responsibilities. But against the background of continuing negotiations and the Union's equally inflammatory publications and comments, and its

[26] *N. L. R. B. v. American National Insurance Co.*, 343 U. S. 395, 404 (1952). *N. L. R. B. v. Fitzgerald Mills Corporation*, 313 F. 2d 260 (C. A. 2, 1963).

statements of "must" demands, the Respondent's role in this battle of

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words seems to me to lose some of its evidentiary significance. Consequently, I question whether this cause of collective bargaining is aided by the Board's taking particular comments and evaluating them in a dispassionate context so extremely different from that of which they were a part. It is too easy through such an approach to find unlawful that which is perhaps at worst only undesirable.

I do not mean to suggest that the issue of good or bad faith has any clear cut answer here. My position is not dictated so much by strong conviction as by uncertainty. I am not persuaded by the reasons that the majority state for their finding of bad-faith bargaining; and the finding itself and the supporting rationale leave me in the dark as to their practical efficacy. But I am particularly disturbed by the treatment accorded Respondent's communications. Surely the Respondent can lawfully communicate with its employees. Yet here, although the communications are held to be some evidence of bad faith, the majority neither in its decision nor in adopting the Trial Examiner's Recommended Order provides the Respondent with any guides by which it can with reasonable certainty determine what it can lawfully say to its employees. In areas such as this bordering on Section 8(c) of the Act and free speech, I believe that the Respondent is entitled to something more by way of clarification than the vague proscription implied in the general bargaining order. But I doubt if the facts and findings indicate what specific limitations

can properly be laid down. In any event, the situation with respect to the bad-faith finding is at best ambiguous, and I would, therefore, find that the General Counsel has failed to prove by a preponderance of the evidence that the Respondent did not bargain in good faith during the 1960 negotiations with the Union.

Dated, Washington, D. C., Dec. 16, 1964.

BOYD LEEDOM, *Member,*

NATIONAL LABOR RELATIONS BOARD.

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UNITED STATES OF AMERICA

BEFORE THE
NATIONAL LABOR RELATIONS BOARD
DIVISION OF TRIAL EXAMINERS
Washington, D. C.

GENERAL ELECTRIC COMPANY,
and
INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO.

Cases Nos. 2-CA-7581-1
7581-2
7581-4
7864 (Post 10-CA-4682)

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UNITED STATES OF AMERICA

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GENERAL ELECTRIC COMPANY,
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Cases Nos. 2-CA-7581-1
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7864 (Post 10-CA-4682).

Harold L. Richman, Esq., Alan H. Randall, Esq., and Joseph S. Rosenthal, Esq., for the General Counsel.

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Benjamin C. Sigal, Esq., David S. Davidson, Esq., and Winn Newman, Esq., of Washington, D. C., for the Charging Party.

Before: Arthur Leff, *Trial Examiner.*

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STATEMENT OF THE CASE

Charges were filed on September 21, 1960, October 4, 1960, October 14, 1960, and March 16, 1961, by the Union above named, herein called IUE or the Union, against the Company above named, herein variously called GE, the Company, or the Respondent. Based on such charges, the General Counsel, on April 12, 1961, issued an amended consolidated complaint (thereafter further amended) alleging that the Respondent in respects more fully to be set out below had engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1), (3), and (5) and Section 2(6) and (7) of the National Labor Relations Act, 61 Stat. 136, herein called the Act. The Respondent filed an answer in which it denied generally the commission of the alleged unfair labor practices, and also pleaded a number of affirmative defenses, some of which were later stricken at the hearing on motion of the General Counsel and the Union. A pretrial conference was conducted on May 31, 1961, and thereafter a hearing was held before Arthur Leff, the undersigned duly designated Trial Examiner, at New York City on some 79 separate hearing dates beginning July 24, 1961. The record was closed for the taking of evidence on February 15, 1962, but the hearing was continued *sine die* for oral argument. Briefs were filed by all parties on July 26, 1962, and reply briefs on November 1, 1962. Oral argument was held on January 28 and 29, 1963. The hearing was closed on January 29, 1963.

Upon the entire record in the case and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. The Business of the Company

[5] General Electric Company, a New York corporation with its principal office at New York City, is engaged in the manufacture, sale, and distribution of electrical motors, appliances and equipment, as well as numerous other products. The Company has plants in 29 States and, in addition, some 400 service installations or other places of business [10] located in all 50 States. The Respondent is engaged in commerce within the meaning of Section 2(6) of the Act.

II. The Labor Organizations Involved

[15] International Union of Electrical, Radio and Machine Workers, AFL-CIO, and its constituent locals referred to in the complaint are labor organizations within the meaning of Section 2(5) of the Act.

[20]

III. The Unfair Labor Practices

A. *The issues presented by the pleadings*

This case arises out of the 1960 national contract negotiations between the IUE and GE. The negotiations led to an unsuccessful 3-week [25] strike, alleged in the complaint to have been an unfair labor practice strike, before the IUE finally capitulated to GE's prestrike contract terms. The complaint basically alleges that the Respondent during the course of the negotiations failed and re-

fused to bargain in good faith with the Union and engaged in related conduct in derogation of the Union's [30] status as bargaining agent, all in violation of Section 8(a)(5) and (1) of the Act. As a subordinate issue, the complaint also alleges a violation of Section 8(a)(1) and (3) based upon an alleged threat to discharge striking employees at the Respondent's Augusta, Georgia, plant and upon the Respondent's failure and refusal to reinstate 20 named employees at [35] that plant who had been replaced during the course of the strike. As to the 8(a)(3) issue, however, all parties are agreed that a finding of unlawful discrimination must stand or fall on the disposition to be made of the complaint's allegation that the strike was caused or prolonged by the Respondent's refusal to bargain.

[40] With respect to the key 8(a)(5) and (1) issue, the complaint as last amended prior to the hearing includes the broad allegation that at all times since June 13, 1960, the date the Union first submitted its contract proposals, Respondent negotiated with the Union in bad faith. [45] As the General Counsel made clear at the prehearing conference, and as his voluminous bill of particulars several times supplemented reflects, the intent of the pleading is to place in issue the Respondent's overall course of conduct, both at and away from the bargaining table, insofar as it bears on the Respondent's bargaining frame of mind during the entire period [50] of negotiations. Without limiting the generality of the foregoing broad allegation, the complaint also contains a number of more specific allegations. Thus, it alleges in substance that on or about August 30, 1960, the Respondent adopted and thereafter maintained what was in effect a "take-it-or-leave-it" posi-

tion with respect to a counteroffer the Respondent had submitted that [55] day. The complaint also alleges that "in order to undermine the Union" and "in derogation of the status of the Union as bargaining agent," the Respondent by means of communications and other appeals directed to employees in the bargaining units (a) engaged in a campaign throughout the period of negotiations to discredit and impugn the motives and abilities of the [60] Union's leadership; (b) attempted through direct contact with employees to induce employee acceptance of the Respondent's August 30 counteroffer; and

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(c) attempted during the latter part of September to induce employees to depart from the Union-prescribed method for conducting a scheduled vote on the Respondent's counteroffer. The complaint further alleges that during October 1960, while national negotiations with the Union were being [5] conducted, the Respondent attempted—further in derogation of the Union's status as national bargaining agent—to bargain directly with employees and/or their local representatives at certain of its plants, and offered at some of them terms and conditions of employment more favorable than those it had theretofore offered the Union in national negotiations. [10] Finally, the complaint alleges that the Respondent failed and refused timely to furnish the Union with certain relevant data the Union had requested in connection with the bargaining. The alleged attempts to bargain directly with employees and the alleged refusal to supply requested information are relied upon by the General Counsel both

as providing [15] additional evidence of bad faith bargaining and as constituting independent violations of Section 8(a)(5) and (1).

B. *As to IUE's status as bargaining representative*

[20] GE employs approximately 250,000 employees, of whom about 120,000 are in organized bargaining units. The IUE is by far the largest union in terms of employees represented. It represents some 70,000 employees under Board certifications issued to it and to its constituent locals. The [25] United Electrical Workers Union ("UE") —from which the IUE stemmed as a result of schismatic action following the ouster of the UE from the CIO for alleged Communist domination in about 1950—is the union next in size. The UE represents either directly or through constituent locals some 10,000 GE employees. The balance of the represented employes are divided [30] among some 100-odd other unions with which GE is under contract.[1]

As a result of separate certifications issued in Board representation proceedings from time to time since 1950, the IUE-represented employees are formally grouped in more than 105 appropriate bargaining units, [35] almost all of which are immediately involved in this proceeding. Appendix A of the complaint as amended at the hearing (General Counsel's Exhibit No. 5), which is incorporated herein by reference, contains a general description of each

[1] Where a certified bargaining agent does not participate in national bargaining with GE—as only the IUE, the UE, and the Pattern Makers do—it is counted here as a separate union for each unit it represents. [60] This is so even though the same union or another local affiliated with the same international may be the certified representative of GE employees at another location or in a separate bargaining unit at the same location.

such unit, the name of the certified union (IUE or one of its locals), the date of certification, and the case number of the Board's [40] representation proceeding in which the certification was issued. As appears from the Appendix, the IUE itself is certified as the representative in 43 of the units and various constituent IUE locals in the others. The record reflects that even in those instances where the IUE itself is certified, the IUE has a local union which represents the employees on a [45] local level and which, vis-a-vis GE as well as its parent International, functions in substantially the same manner as do the locals directly certified.

Notwithstanding the separate unit certifications, the IUE and GE, [50] by mutual acquiescence, have historically engaged in bargaining on a national or multiunit basis, at least with respect to the negotiation of their basic agreements. This pattern of bargaining, which had theretofore prevailed in the relationship between the UE and GE, and which is still [55] conformed to in GE's dealings with the remnants of UE, was adopted in 1950

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when the IUE first appeared on the GE scene, and has consistently been followed since. The first national or multiunit collective bargaining agreement was entered into between the IUE and GE in September 1950, and was followed by renewal agreements in 1951, in 1952, in 1954 and in 1955. [5] The agreements recited in their preamble that they were

> entered into . . . by and between [GE] and [IUE], acting for itself and in behalf of each of the below-

listed IUE (Cio) Locals currently certified as collective [10] bargaining representatives of Company employees and such other IUE (Cio) Locals as may hereafter be certified as collective bargaining representatives of Company employees.

[15] The agreements also contained the following union recognition clause:

> The Company agrees to recognize the Union on behalf of and in conjunction with its Locals for those bargaining units of Company employees for which the Union or any of its locals, through [NLRB] certifications, is designated, [20] as the exclusive collective bargaining representative within such units . . .

The 1960 agreement, entered into following the strike, was similarly executed by the IUE on behalf of itself and listed Locals (along with such [25] additional Locals as might thereafter be certified). It contained a recognition recital identical to the one in the earlier agreements.

Every agreement between the IUE and GE has, with a few insignificant exceptions, covered every GE bargaining unit for which the IUE or an [30] affiliate had been certified by the Board. The only exceptions have been a few small units for which the IUE had obtained representation rights at a time when the particular plants involved were not integrated in the GE corporate structure, but subsequently became part thereof, and where special situations existed which necessitated special treatment. The [35] total number of such excluded units in 1960 was 8 and the total number of employees in those units was 118.

In actual practice, the negotiation of the national agreements between the IUE and GE has been conducted on

behalf of the IUE and the [40] certified locals by the IUE's General Electric Conference Board, acting as their duly designated bargaining agent. The IUE-GE Conference Board is a constitutional body of the Union. It is composed of elected delegates from all IUE local unions representing GE employees.[2] The Conference Board designates from among its delegates the negotiating committee that [45] directly participates in the contract negotiations. Under the Union's constitution, the Conference Board is authorized to determine contract proposals, to call strikes, and to approve and conclude agreements, and any such action voted by it is made binding upon all locals, regardless of [50] their individual consent.

The Respondent in its dealings with the IUE since 1950 has recognized and acquiesced in the Conference Board's status in national bargaining as the authorized bargaining agent of all locals represented on that body and has expressly acknowledged the Conference Board's [55] constitutional authority to undertake effective action binding on all such locals with respect to matters committed to national contract

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negotiations. As to such matters, GE for all practical purposes has dealt with the IUE through its GE Conference Board as a *de facto* accredited bargaining representative of all IUE represented employees in a single [5] overall bargaining unit.

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[2] Each local is entitled to 1 delegate for each 1,000 members or [60] part thereof, and 1 additional delegate for each additional 1,000, but not more than 4 in all. The president of the IUE is an *ex-officio* member of the Board and all its committees.

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The national agreements made between the IUE and GE since 1950 have included comprehensive provisions applicable on a chainwide basis relating to regulation of wage rates, hours, and terms and conditions of employment. Thus, for example, such subjects as overall wage increases, [10] automatic in-grade wage progression, cost of living adjustments, vacations, holidays, overtime provisions, insurance and pension benefits,[3] termination pay on plant closings and dues checkoff arrangements have been covered by such agreements. The agreements have not been all-embracing, however, and have reserved certain subjects for negotiation on a local level. Since 1950, [15] the only contract negotiations the Company has conducted with any IUE locals covered by the national agreements have been for supplements to the national agreements covering matters such as local seniority, layoffs and recall, and inequity wage adjustments. The IUE also retains an important representative status in the administration of the national agreements. [20] Under the grievance and arbitration procedure set out in the national agreements, the Locals handle their grievances through the first two steps of the three-step grievance procedure, but at the third ("headquarters") step, the grievance is "referred to the National Officers of the Union for submission to an Executive Officer of the Company or his designated [25] representative." The IUE alone has the authority and responsibility to administer the arbitration procedure.

When, as will be seen, the Company went into the 1960 negotiations, it gave no indication of any desire to depart from the national method of [30] bargaining as historical-

[3] Insurance and pensions are covered by separate national agreements simultaneously executed.

ly developed with the acquiescence of all concerned. For the purpose of determining the Respondent's bargaining obligations in this case, it is unnecessary to disturb the Board's appropriate unit findings as heretofore made. As was stated in *Radio Corporation of America,* 135 NLRB No. 100, "the Board is not such a prisoner of a narrow interpretation of [35] its own findings concerning appropriateness of a separate bargaining unit that it cannot recognize a workable pattern of bargaining developed by the parties which . . . seeks to accommodate the interests of local and national bargaining." Here the parties have developed such a pattern which in the particular circumstances of this case I find to be entirely [40] consistent with the spirit of the Act. As to matters historically delegated to national negotiations, the Respondent has recognized the IUE, through its Conference Board, as the actual bargaining agent for all employees in the aggregate of units represented by delegates to the Conference Board. Having accorded such recognition to the IUE and having entered into the [45] 1960 national negotiations on that basis, the Respondent is in no position in this proceeding to question the representative status of the IUE, and, within the area of such negotiations must be held to the same standards of good faith bargaining as would have prevailed had a finding been made in this case that the collective units comprised a single appropriate bargaining [50] unit with the IUE as its exclusive representative.[4]

[4] In order to find that a unit is *a* unit appropriate for the purpose of [55] collective bargaining, it is unnecessary to decide that it is the only appropriate unit. *Morand Bros. Beverage Co.*, 91 NLRB 409, 478; *A. S. Beck Shoe Corp.*, 92 NLRB 1457, 1458-1459; *Safeway Stores, Inc.*, 110 NLRB 1718, 1731-1732. There is Board authority for finding that a grouping comparable to that represented by the IUE in the instant case [60] constitutes *a* unit appropriate for the purposes of collective bargaining. *General Motors Corp.*, 120 NLRB 1215.

C. *Background of 1960 negotiations*

1. GE's general approach to collective bargaining

[5] As will later more fully appear, many of the specific events relating to the 1960 negotiations can be seen in true focus only if considered against the backdrop of GE's underlying policies relating to collective bargaining. It is therefore appropriate to examine such [10] policies before undertaking a review of GE's specific conduct which is here under attack.

GE's present approach to employee and union relations was first conceived in 1947 and developed largely under the guidance of Lemuel R. [15] Boulware, then and for many years later GE's Vice-President-Relations-Service.[5] The approach has often been referred to as "Boulwareism," although GE itself abjures use of that term, claiming it has been misconstrued by outsiders to reflect a concept not actually GE's. It came into being as an aftermath of a lengthy companywide strike which the UE [20] had conducted against GE in 1946. That strike was settled only after GE raised its wage offer from a prestrike 10 cents an hour to a poststrike 18½ cents an hour. As appears from one Company report, GE's management regarded UE's "highly successful strike" as "little short of a debacle." Management had theretofore had a "feeling" of "security in the knowledge [25] that the Company had been a good employer [which] had treated employees

[5] During the 1960 negotiations Boulware no longer occupied that position having been succeeded by Jack S. Parker, but still participated in a consultant capacity in some of management's deliberations relating to [60] such negotiations.

fairly, and had pioneered in the voluntary installation of many employee benefit programs." Nevertheless, the strike had been "broadly supported" by employees. The realization that its earlier feeling of security had [30] been a false one was a "somber event" for GE management.

The jolt of the 1946 strike led GE management to take a new look. GE sought to determine why it had failed (as it saw it) to achieve the same high degree of success and effectiveness in its employee relations as it had in other areas of its operations, such as, for example, in [35] product development and marketing. Management concluded, *inter alia*, that to gain employee job satisfaction, loyalty and support, it was not enough that the Company be a good employer. It was equally if not more important that the Company be *known* to its employees as a good employer. With regard to employee pay, benefits and other terms and conditions of employ- [40] ment, as well as other elements entering into employee job satisfaction, the employees must be made to understand that it was the Company's aim "to do right voluntarily" and to allow its employees all that was fairly warranted, bearing in mind the "balanced best interests" of employees and all others having a stake in the Company's enterprise. Moreover, the [45] employees must also be made to understand that, just as there was no need to drag reluctantly from the Company all that was fairly coming to them, so, too, there could be no profit in a show of force by a labor organization designed to extract more for the employees than the facts—as management evaluated them—justly warranted. This involved essentially a selling [50] problem, or, as the Company termed it, one of "job marketing." If the

Company was to achieve ultimately the same success in job marketing that it had accomplished in its highly successful product marketing, it must assimilate to the latter what it had learned in the former about sound [55] product planning and research, market development and merchandising.

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Application of this program necessitated a revision of the Company's approach to collective bargaining. The Company had theretofore engaged in the traditional type of bargaining, under which a union initially asks more than it expects to get and an employer offers less [5] than it expects to give, and, through the process of compromise and give-and-take, both sides, if bargaining is successful, eventually arrive at a mutually acceptable middle ground. But that type of bargaining had to go if the Company was to establish its credibility with employees that it was putting into effect *voluntarily* and without need of outside pressures [10] all that was warranted in the way of wage and benefit improvements.

Under GE's present approach to bargaining, as GE states it, the Company itself seeks through extensive year-round research into all pertinent facts to determine what is "right" for employees. Its research [15] includes not only a study of business conditions, competitive factors, economic trends and the like, but the gathering of its own information as to employee needs and desires through independent employee attitude surveys, comments made by employees at informative meetings, direct discussions by supervisors with employees and statements in union [20]

publications. When bargaining begins, the Company, as part of its overall research, listens to the presentations made by all the unions with which it deals, and evaluates the unions' demands with the help of all the facts it has on hand, including those supplied by the unions.

[25] On the basis of its study so made, GE makes its own determination if what is "right." GE then makes an offer which—as it declares to the unions and to its employees—includes *everything* it has found to be warranted, without anything held back for later trading or compromising. GE makes precisely the same basic offer to substantially all unions with [30] which it is engaged in negotiations. Contrary to the assertion of the General Counsel, GE does not initially present its offer on an avowed "take-it-or-leave-it" basis. It professes a willingness to make prompt adjustments in its offer whenever (but only when) new information from any source or a significant change in facts indicates that its initial offer [35] fell short of being right.[6] But GE believes—or at least so declares—that if it has done its preliminary research into the facts accurately, no substantial reason for changing its offer should ever exist, save in the event of some new unforeseen development having an impact on the economy as a whole. And GE repeatedly emphasizes, especially to employees, [40] that as a matter of policy it will not make any change it believes to be incorrect because of a strike or threat of

[6] GE contends that practically every offer it has made in the past [55] 10 years has been altered in one way or another after discussions with the unions involved. But this is disputed by the General Counsel who asserts that once GE has formally presented its offer it will only consider insubstantial changes save in extraordinary situations such as the one referred to in footnote 8, below. The nature of the [60] changes made prior to 1960 was not fully explored at the hearing and cannot be here evaluated. The 1960 changes will be considered in a later section of this report.

strike and that it will "take" a strike of any duration to resist doing what it considers to be "wrong."

The Respondent extols its "fair and firm offer" approach as a [45] straightforward one that removes doubt from employees' minds as to precisely where it stands. It disparagingly refers to the "ask-and-bid" or "auction" form of bargaining as a "flea bitten eastern type of cunning and dishonest but pointless haggling." Such bargaining, according to the Respondent's articulation, allows a union to *appear* to get more than an employer is [50] willing to give, though that is often not the case, and this only serves, it says, to mislead employees into believing that union officials are useful

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in ways they are not, thus falsely enhancing the union's prestige while diminishing that of the employer and encouraging employee support of union shows of strength. The Respondent's approach on the other hand, it says, makes it obvious to employees that the Company "is not being [5] forced to be fair by the belligerent action of a labor union."

All that has been said above is tied to what clearly appears to be the keystone of Respondent's bargaining philosophy—the marketing of management positions directly to employees so that the employees in [10] turn may influence union acceptance. It is a stated policy of the Company to achieve maximum involvement and participation of employees in decisions affecting its business, including specifically though not limited to decisions relating to collective bargaining; to minimize opposition to steps management

takes; and to build active employee support for management's [15] goals and objectives. Toward that end, GE has fashioned an elaborate employee communications system, making use of plant newspapers, daily news digests, employee bulletins, letters to employees' homes, television and radio broadcasts and other media of mass communication, as well as personal contacts. Supervisors are instructed as to GE's views on [20] controversial subjects and are expected to speak out to employees on such subjects and seek to gain employee confidence in the correctness of company decisions. The direct employee communications —if 1960 may be considered as representative—are utilized on a most extensive scale both before and during negotiations to influence employee attitudes to a favorable reception [25] of the Company's views and rejection of the union's conflicting positions. After the Company's offer is presented to the unions, the flow of communications, directed towards that end, reaches flood proportions. At that time, the Company also discusses the terms of its offer at plant meetings; invites employees to take up individually with their supervisors or [30] managerial officials any questions they may have about the offer; and seeks through direct contact of its supervisors with employees to sound out for its own guidance employee reactions to its offer. The avowed purpose of the communications program is to equip employees to render their own independent judgment on matters commonly affecting their own interests and [35] those of the Company. But, as related to bargaining issues, the record in this case, as will be seen, leaves no doubt that GE's more basic purpose is to compete with the bargaining representative for the allegiance and support of employees.

[40] Another consideration which shapes the Respondent's approach to bargaining is its uniformity policy.

As noted above, GE deals with some 100-odd unions. With regard to wage and benefit improvements, it is GE's policy to see to it that no [45] union gets more favored treatment than any other. GE justifies that policy on the basis of fair play, business realism, and as necessary to avoid whipsawing. In line with that policy, GE prepares and presents to substantially all unions with which it deals the same basic offer with regard to wage adjustments and benefit programs.

[50] Moreover, as further noted above, about half of GE's employees are unrepresented. Representation elections frequently are held among different groups of such employees, and sometimes decertification elections among groups of employees previously represented. Where such elections [55] are held, GE engages in preelection campaigning in which it makes no secret of its opposition to union organization. In urging its employees to vote against union representation, GE emphasizes, *inter alia,* that a union can obtain for them no benefits they would not otherwise receive. It points up the Company's policy to "do right voluntarily" and to put into [60] effect for nonrepresented employees the same pay and benefit program it makes available to represented employees.[7] In keeping with such assurances,

GE applies in the case of its unrepresented employees the same principle of uniformity that it applies to represented

[7] What is said here is not meant to suggest that GE's participation in such election campaigns is illegal. No GE election has ever been set aside because of improper preelection conduct by the Company.

groups. The terms of the basic offer made to unions are also put into effect for nonrepresented employees. Prior to 1960, GE invariably withheld such action until [5] either the IUE contract had been settled or the anniversary date of the prior IUE contract had expired.

Theoretically, it is possible for company negotiators engaged in negotiations with a given union to improve as to that union the basic [10] offer made by GE to unions generally, even though the offer has already been put into effect for other bargaining units or for unrepresented employees. But the Company witness testifying on that point—Virgil B. Day, now Vice-President-Relations-Service—could recall only one instance where that was ever done. And that, as appears from his testimony, involved a [15] situation squarely falling within the stated exception to GE's "fair and firm offer" approach, namely, that GE will change its offer where a new significant development has occurred to make that change "right."[8] In one important area, however, the Company's negotiators have no flexibility whatever. As appears from Day's testimony, the Company insists [20] for practical reasons on a single uniform pension plan covering all GE employees, and once an offer has been put in effect for other bargaining

[40] [8] That change occurred in 1953. As appears from Day's testimony, GE had settled that year with other unions and had also put the benefits of its basic offer in effect for nonrepresented employees, but the IUE had held out for more past the anniversary date of its contract, without, [45] however, striking. A "break-through" had then occurred in the national wage pattern as a result of a settlement in another major industry. It was one which the Company felt would soon be reflected broadly throughout the economy. Moreover, the Company at that time was faced with a tight manpower situation and was fearful of being placed at a [50] competitive disadvantage in the labor market. Accordingly, it recognized the "break-through" as a significant "new fact," changed its offer to the IUE accordingly, and in line with its policy to "do right voluntarily" provided a similar adjustment to the unions with which it had already settled, as well as for its unrepresented employees.

units or for nonrepresented employees, the freedom of negotiators to effect changes is foreclosed. The significance of what has just been said will become more clear when the course of the 1960 negotiations is reported.

[25] 2. Preparations for 1960 Negotiations

The prior collective bargaining agreement between GE and IUE, negotiated in 1955, was for a 5-year term ending October 1, 1960. The [30] agreement when made was considered by the IUE a highly satisfactory one. Among other economic improvements of substantial benefit to employees, the package provided for an immediate 3 percent general wage increase; for additional annual increases amounting to 3 percent each in 1956 and 1957, and 3½ percent each in 1958 and 1959; and for a cost-of-living escalator [35] clause, which resulted over the 5-year term in "adders" totaling some 10 percent. The 1955 contract also contained a reopener provision allowing the IUE to reopen the contract in 1958 for the negotiation of employment security items only.[9]

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[55] [9] It is GE's practice to give the IUE (and also the UE) an informal oral outline of the contents of its basic offer about a day before formal presentation of the offer is made to the IUE and other unions with which GE is engaged in negotiations. That was done in 1955 at a dinner meeting attended by Vice President Boulware and [then] Union Relations Manager [60] Virgil Day, for the Company, and by President James B. Carey and Conference Board Chairman John H. Callahan, for the Union.

[45] When the informal outline was given, Carey declared his agreement in principle with the economic package, but expressed the view that some other features, particularly in the employment security area, were needed to make the offer acceptable. At his request, the GE representatives agreed to withhold for several days the formal [50] presentation and public announcement of its offer to allow the IUE a preliminary opportunity to negotiate further on matters in difference before GE froze its offer. In the intervening period, Carey met with Boulware informally and discussed the Union's strong objections to a 5-year contract without employment security provisions. At a regular [55] negotiating

(Footnote continued on following page)

In 1958, the IUE reopened the 1955 contract for the negotiation of employment security items. GE rejected all the Union's demands. The Company proposed instead a so-called Savings and Security Plan which provided for employee investment in Company stocks and bonds. The same [5] Savings and Security Plan was simultaneously offered to other unions and was later also made available to unrepresented employees. The IUE rejected the plan proposed by the Company as unrelated to the problem of employment security, but the Company stood firm. The result was a stalemate. The Union failed to muster sufficient support for a strike [10] vote. In the wake of the 1958 negotiations, the IUE changed its constitutional provisions so as to provide for a majority instead of as theretofore a two-thirds vote of the GE Conference Board to call a national strike.

[15] As the end of the 1955 contract neared, both sides began to prepare for the oncoming 1960 national negotiations.

In late 1959, the IUE and four other member unions of the AFL-CIO Industrial Union Department representing bargaining units in the GE chain [20] formed a loose coalition for the purpose of exchanging information and coordinating certain other activities related to the 1960 negotiations. The IUD group distributed to their represented

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(Footnote continued from preceding page)

meeting the next day—this was still before formal presentation or public announcement of the offer was made—GE agreed to include in its offer the 1958 reopener, and the union negotiators agreed on that basis to recommend acceptance of the Company's offer when formally presented. Thus, in 1955, substantial agreement was worked [60] out between the GE and IUE before GE presented its formal offer to the IUE and other unions and announced it publicly. When the GE offer was formally presented to all unions a day or so later, it incorporated the 1958 reopener provision.

employees in the GE and Westinghouse chains a ballot listing some 19 demands—substantially all of which later appeared in the IUE contract proposal. Employees were asked [25] to indicate on the ballot the order of priority in which they desired such demands pressed. Later, after the IUE bargaining demands were formulated and publicly announced, the IUE put on the road a so-called IUE Caravan which visited various GE locations for the purpose of dramatizing to the employees and the communities the nature, need and reasonableness of the [30] IUE bargaining objectives. The IUE bargaining objectives were also publicized in publications of the IUE and its Locals, and, it is reasonable to infer, though there is no specific evidence on this point, at Local meetings as well.

[35] Even before the IUE bargaining demands were formulated, however, GE was able to anticipate the major bargaining issues with which it would be faced in the 1960 negotiations. Thus, GE quite reasonably expected the IUE to renew its 1958 employment security demands—such as for supplementary unemployment benefits, the right of employees to follow jobs to other [40] plants, restrictions on the subcontracting out of work during layoffs, neutralization of the effects of automation, etc. From its own employee attitude surveys and other research, GE had satisfied itself that employment

security was a matter of deep concern to employees. Moreover, GE anticipated that it would be confronted with a serious wage issue in the 1960 negotiations. It had come to regret its 1955 wage settlement, particularly the cost-of-

living escalator feature thereof which had proved far more [5] costly than it had foreseen and to the continuance of which it was now opposed in principle as having an inflationary tendency. It was also of the view that the annual wage improvement factors provided for in the 1955 contract were no longer appropriate in the light of the current economic climate and wage adjustment patterns. At the same time, GE was [10]aware, as its communications reflect, that the Union would make much of GE's substantial profits and productivity rate as justification for continued wage increments along the lines of the 1955 contract.

GE early realized that it would be confronted with greater [15] problems than usual in the 1960 negotiations. It knew well ahead of the start of negotiations that its 1960 offer would be far less attractive to the Union in terms of economic content than, say, its 1955 proposal. It knew, too, that it was faced with a special problem in the area of employment security, particularly since the Union's failure to get anywhere [20] in 1958 with its employment security demands had left a sour taste. Moreover, taking into account the reactivated IUD coalition and other considerations, such as the IUE constitutional change relating to strike votes, GE was persuaded that the IUE leadership was determined to press hard in the 1960 negotiations for its major contract demands. On the basis [25] of its total appraisal of the situation, GE feared that the perennial risk of a strike was potentially greater in 1960 than in prior years. Long before the 1960 negotiations began, GE concluded that the solution to its anticipated problems lay largely in a carefully prepared and particularly intensified communications program designed to build employee

support for [30] its positions, as opposed to the Union's, on the bargaining issues that were likely to arise.

As early as November 1959, GE headquarters drew up a list of topics with brief digests of supporting arguments, on which communications [35] to employees would be appropriate. Then, during a 2-day meeting of plant Employment Relations Managers ("ERMs"), held at New York in December 1959, these topics and a program for preparation of materials were outlined fully. The topics and supporting digests, under the heading *"Communication Topics (Prior to Negotiations)"* were later incorporated in a monograph released [40] in March 1960 to plant communication personnel, entitiled "Building Employee Understanding." Among the 28 topics included were the following (citing here only the topic headings): "How automation makes more and better jobs"; "How subcontracting helps to keep us competitive; helps make jobs secure, helps other businesses, etc."; "Role of profits in providing jobs"; [45] "Why employee 'expectations' should be realistically modest in 1960"; "The Why and How of curbing inflationary settlements"; "'Escalation' vs. Inflation"; "Why S. U. B. is not the answer to employment security"; "The problem of guaranteeing transfers to employees during plant moves"; "The fallacy of using 'ability to pay' as a guide to wage and benefit [50] levels—a tie-in with the profit story"; "Why employees could not gain and certainly would lose by striking"; "Why the Company has no choice but to 'take' a strike rather than be forced beyond what is right"; "Why employees can expect their union officials to 'demand' a strike from them"; "Show how employees not represented by unions get their wage and bene-

fit [55] improvements without the possible delay of waiting for union acceptance.

Following the prepartion of the list of topics, the Company issued as to some of the topics detailed communication guides for the suggested use by ERMs at plant locations, containing basic messages, news [60] stories, editorials, questions and answers, photo features, letters to employees, and other material, which, with appropriate revision to meet local conditions, might be used to develop the communication topics.

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These guides set forth in detail the Company's arguments on automation, the necessity for profits, opposition to supplementary unemployment benefits, the need for subcontracting, and on other matters on which bargaining issues were anticipated. The record shows that the communication program [5] outlined above was thereafter widely applied in plant newspapers and other employee communications issued before as well as after the commencement of negotiations.

The monograph, "Building Employee Understanding in 1960," embodies [10] the blue print of the Company's communication program, at least in its earlier stages. The document asserts it to be the employer's responsibility to provide full and accurate information on [negotiation] issues," [10] so that employees, rather than rely upon what they are told by their union officials, may make their own

[10] Actually, however, as the Respondent eventually conceded at the hearing, GE does not attempt to provide "full" information but gives its own one-sided presentation, on the theory that the Union can, should, and [60] does take care of its side of the argument.

personal assessments, see to it that their [15] union officials act as their servants rather than their masters, and direct their union officials to pursue a course that the employees decide for themselves is in their own and their employer's common best interests. In making that assessment--the monograph adds—the employees should be asked to consider whether they have any personally valid reason for striking [20] whether union officials when demanding a strike are not "politically motivated by reasons of their own"; whether a strike is likely to bring about any improvements; and "whether the certainty of heavy pay losses in a long strike may be worth suffering when balanced against the uncertainty of any real gain." (As to the last, the monograph comments, "His [the [25] employee's] information needs on the subject of strike losses inside and outside the Company are thus evident.") The document also emphasizes the need for employees to understand the careful research undertaken by the Company to develop a proposal that "best suits the needs of employees and the Company in which they make their living," as well as the Company's policy [30] when making a proposal to hold nothing back for horsetrading. The manner in which GE in its subsequent direct communication to employees implemented the foregoing program, planned long in advance of negotiations, will be shown more fully *infra*.

[35] Further in preparation for the 1960 negotiations, Vice President Parker and Union Relations Manager Moore, along with several consultants, made a swing around the GE chain in early 1960 to discuss with plant managers and others the particular business needs, local issues, and employee attitudes and desires that might have

to be evaluated in shaping up the [40] Company's 1960 contract proposals. In the course of their trip, Parker and Moore stopped at some 16 area locations where they spoke at general meetings to some 13,000 supervisors and some 700 to 800 section and department heads of all components of the Company. Moore in his prepared address to supervision stressed, *inter alia,* that the solution to the 1960 [45] negotiation problems would be

> along the lines of the communication that you are doing—both written and oral—and the man-to-man communications and relationship that you have built up, because really *what you're* [50] *doing is establishing your credibility as against the time when you'll need it,* and one of the times that you are going to have to draw on it is this fall *when the votes are cast whether the folks believe you or believe the opposition.* (Emphasis supplied.)

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In his discussion of the role of the supervisor in securing employee acceptance of the Company's position, Moore said:

> Now, whether we have a strike next fall depends not alone, [5] however, on whether employees believe they have an appropriate offer from General Electric Company and have received satisfactory day-to-day treatment from their bosses. *It also depends on whether employees believe they can gain anything further by a strike. And, lastly, it also depends* [10] *on whether employees understand that they will be asked to strike in any case to support the political ambitions of some union officials.* (Emphasis added.)

He further told the supervisors that "you owe it to [employees] to let them [15] know every chance you get certain hard facts." For one thing, employees must be made to understand that it is "better for all concerned, including employees, for the Company to take a long strike now than to yield to demands that would threaten sales and jobs in the future." For another, the employees should be made "to understand the motivation of union [20] officials who foment trouble for trouble's sake" and "simply to further their own selfish ambitions."

Parker in his comments likewise emphasized that the Company's success in presenting its proposals would depend largely on its supervisors' [25] effectiveness in gaining employee acceptance through "personal individual man-to-man communication." Parker rejected as untrue the belief of some that but for the Union's negotiating stand the benefits GE made available to its employees would not be forthcoming. He emphasized that the Company framed its offer on the basis of its own careful research, voluntarily [30] putting into its offer all it considered appropriate in light of the best interests of all associated with its business. He stressed that the Company, once having decided on what was appropriate, would not as a matter of policy yield further concessions by reason of a threat of force, for to do so, he said, would only open the door to future union shows of strength and [35] demands for more. The Company had long since resolved, said Parker, that "if you are going to take a strike you might just as well take it now [and] we are completely relaxed on this front." Parker identified the Company's bargaining approach as that of Boulware, which he described as follows:

[40] The Boulware approach to this has been that we would go forward and do the things which we felt appropriate. We would then offer these to the Union and if they saw fit to accept them, why God bless them, but if they didn't well they could do something else.

[45] 3. Prenegotiation meetings

The 1955 National Agreement provided for notice of modification or termination not more than 60 days and not less than 30 days prior to [50] October 1, 1960. Negotiations were to begin within 15 days after such notice.

On December 22, 1959, IUE President James B. Carey wrote GE Board Chairman Ralph J. Cordiner requesting an "informal and unpublicized discussion on matters of mutual concern." Cordiner referred Carey to [55] Moore, stating that GE had delegated to Moore full responsibility for dealing with the IUE. On January 26, 1960, representatives of the IUE and of GE met at an informal meeting arranged between Carey and Moore. Carey asked GE to join with the Union in putting together a common body of information for the 1960 negotiations. Moore agreed to do so to the extent [60] it was appropriate and possible. He asked Carey to submit in writing the Union's specific requests for information.

On March 7, 1960, the IUE submitted to GE a written request for information relating to employment and layoff statistics, hours worked, average earnings, and the operations of the Company's pension and insurance plans.[11]

[60] [11] The information requested as to the pension and insurance plan, or most of it, was information GE was required to furnish under its then existing agreements with IUE.

[5] Between March 7 and May 5, 1960, IUE and GE representatives held several additional meetings relating to the subject of information.

During that period, as contrasted to a later period after [10] negotiations began, GE displayed a clear spirit of cooperation in furnishing the Union the information it desired. There were a number of instances where GE thought it was not feasible or too costly to supply the information precisely in the form requested. In those instances GE suggested and the Union consented to a different basis of submission that would substantially [15] meet the Union's needs. In the end the Union expressed satisfaction over the manner in which GE had within reason complied with its prenegotiation requests for information.

At the preliminary meetings, Carey at various times urged early [20] negotiations, starting well ahead of the time stipulated in the contract. More specifically, he suggested May 24, 1960, which was the scheduled date of the Conference Board meeting at which the IUE planned to have its 1960 bargaining demands formulated. Moore though it too soon to decide, but agreed to take the Union's request for early negotiations under advisement.

[25] In late May, GE agreed to meet with the IUE on June 13, 1960, but solely for the purpose of hearing the IUE's presentation and explanation of its 1960 contract demands. GE made it clear that its agreement to meet was subject to the express reservation that the meeting would not be [30] construed as the opening of negotiations.

D. *GE's refusal to bargain on June 13, 1960 with respect to its personal accident insurance proposal*

[35] The parties met, as arranged, on June 13, 1960. At the very outset of the meeting, the Union, before presenting its 1960 contract demands, brought up for discussion a recent proposal made by GE relating to the coverage of IUE-represented employees under a group personal accident [40] insurance policy. The proposal had first been submitted to the Union after arrangements had been completed for the June 13 meeting.

On June 1, 1960, GE advised the IUE by letter that it had arranged with an insurance company for an accidental death or dismemberment group [45] insurance policy under which all GE employees desiring to do so might participate, the full cost of the insurance to be borne by the participating employees. The letter stated that the decision to make the insurance available had "resulted from intensified employee interest in additional coverage of this type." The insurance was to be made available as of [50] July 1, 1960. If the IUE had no objection to make the proposed insurance available to employees in IUE-represented units, GE would proceed to have this done by the date mentioned, in advance of the employees' vacation periods. However, if the Union desired to defer action, the insurance would still be available for IUE-represented employees at any later time [55] the Union desired. GE closed its letter with the assertion that it did not regard the new insurance as related to the forthcoming negotiations, but simply as an opportunity for personally interested employees to secure additional insurance at a lower cost than would normally be available to them as individuals.

The plan for the new accident insurance had been publicized to all GE employees prior to the June 13 meeting, along with an announcement that enrollment would take place during the week of June 20-24, 1960.

[5] The existing insurance plan incorporated in the IUE-GE 1955-1960 agreement already provided for accidental death and dismemberment insurance coverage in a limited amount under a contributory arrangement, with the Company and covered employees sharing the cost. The new proposed insurance, which was of a similar nature, was to be in addition to that provided for [10] in the contract, but its full cost was to be borne by employees electing to participate in the group policy.

Under the 1955-1960 IUE-GE Pension and Insurance Agreement, each of the parties had waived the right to require the other party to bargain [15] as to pensions or insurance matters during the term of the agreement, except during the stated renegotiation period.

At the June 13 meeting, the Union objected to the Company instituting the new insurance without first bargaining about it. Carey [20] contended that the Company's proposed plan was connected to the basic insurance plan covered by the contract and was a bargainable matter. He declared that the Union did not desire to defer the matter until the start of formal negotiations, but was prepared to negotiate on the Company's insurance plan that day and to reach agreement thereon. At [25] various times during the ensuing discussion, Carey stated (a) that the Union was opposed to its members paying the cost of the insurance; (b) that the cost as reported by the Company was in any event too high and could be substantially lowered

by a blanket policy covering all employees; (c) that if the proposed insurance were to be put into effect as proposed, it would [30] prejudice the Union's ability and opportunity later to negotiate on its program for improvements in the insurance schedule and for an increase in the amount of the Company's contributions to the cost of insurance, and (d) that the Company in offering the insurance at that time on a take-it-or-leave-it basis was attempting to discredit the Union and [35] "undermine" collective bargaining by making it appear that the Union, if it deferred action, was depriving employees of a benefit they could have had during their vacations. Subsequently, the Union advised the Company in substance that it would interpose no objection to the Company putting the new insurance into effect at the time proposed, provided GE paid the full [40] cost of the insurance pending bargaining on the subject. But such bargaining, it stated, should be conducted without delay.

The GE representatives took the flat position that the proposed new insurance was not a bargainable subject at that time under the terms [45] of the existing agreement. It might perhaps become so, they stated, after the beginning of formal negotiations later on. In the meantime, the Union could either accept the insurance as offered or reject it. If the Union declined to accept the proposal as made, the Company would respect its wishes, and would not put it in effect for the IUE represented employees. [50] It would, however, go ahead with its plan to make the new insurance available for all other employees before vacation time.

At the same time, however, Moore unsuccessfully sought to convince Carey that GE had no ulterior motive in mak-

ing the added insurance [55] available at that particular time. He assured Carey that the Company would not attempt to embarrass the Union by making capital of the Union's refusal to allow its members to participate in the new insurance plan on the basis prepared.

[60] There was no further change in the positions of the parties. The Company went ahead with its new insurance plan as to other employees without offering participating rights to IUE-represented employees. GE kept faith with its promise not to make capital of the Union's rejection. In a teletype to ERMs at plant locations sent out on June 14, 1960, Moore urged

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them to "take pains to not publicize that IUE objections prevented us" from offering the insurance to IUE represented employees. So far as appears, the ERMs generally complied.[12]

[5] The General Counsel and the Union assert that in the subsequent formal contract negotiations, GE again refused to bargain on the subject of the personal accident insurance. A fair reading of the record does not support that assertion, however. So far as appears, the Union never made the added accident insurance a matter of formal demand during the [10] negotiations. The negotiating minutes in evidence do show that casual reference was made to the subject on several occasions. But on each occasion, it came up simply in the nature of a complaint by the Union negotiators concerning GE's past conduct. Dur-

[12] In thereafter announcing the enrollment dates for such insurance, however, some of the plant publications noted that "Employees in [60] bargaining units are eligible provided there is no objection to this Insurance on the part of the unions."

ing the negotiations, GE told the Union on several occasions that the added personal accident [15] insurance was still available for IUE-represented employees on the original terms if the IUE wished it. The IUE did not wish it on that basis, but never during the formal negotiations suggested any specific alternative arrangement.

[20] E. *Presentation of IUE's contract proposals to GE on June 13, 1960, and GE's Communications to employees with reference thereto in advance of bargaining*

[25] At the June 13 meeting, the Union presented its contract proposals. The proposals had theretofore—on May 24—been formulated at a Conference Board meeting and had been widely circulated internally to the Union's membership, along with supporting arguments.

[30] The Union's 1960 contract proposals included demands for (1) a 3½ percent annual wage increase; (2) continuance of cost-of-living escalation; (3) improvements in holidays and vacations; (4) establishment of a joint labor-management committee to recommend adjustments for sharing the benefits of automation; (5) equal pay for equal work; (6) supplemental [35] unemployment benefits (SUB); (7) separation pay; (8) a union shop; (9) unemployment security provisions, specifically, the right of employees to follow their jobs transferred to other plants and restrictions on the subcontracting of work normally done at a plant and on overtime work while plant employees are on layoff; (10) limited paid sick leave; (11) various [40] improvements in the existing pension and insurance plans; and (12) numerous revisions in the National agreement as to noneconomic matters.

There was no discussion of the Union's proposals at the time, except for clarification of some of the items in response to questions [45] from the Company side of the table. At the end of the Union's presentation, Moore simply declared that the Union's proposals were "ridiculous," "astronomical" in terms of cost, and not designed for an early settlement. At the end of the meeting, Carey again requested early negotiations. Moore said he would take the request under advisement.

[50] The Company did not wait for negotiations to begin before proceeding to present its case directly to its employees, as, indeed, on some bargaining issues it had already long been doing in anticipation of union demands. The Company obtained reprint rights to certain newspaper [55] articles which were critical of the Union's demands and sent them to

plant ERMs for suggested publication in employee communication media. One of the newspaper articles reprinted in employee news media inaccurately estimated the cost of the Union's demands for recognized employees alone at a half billion dollars. On July 1, the Company issued a four-page [5] Relations Newsletter, entitled "Another Round of Astronomical Union Demands versus 1960 Problems."[13] In a subsequent teletype, it advised the ERMs that "Supervisors should be able to discuss this subject with employees on the basis of the July 1 Relations Newsletter and the interest generated [by] the news stories."

[40] [13] The Relations Newsletter does not go directly to employees but is designed for distribution to managerial and supervisory personnel and to community thought leaders

[10] The July 1 Newsletter discussed the IUE demands largely in terms of their asserted adverse impact on employee job security and resultant injury to GE plant communities. The letter stressed that the IUE demands if met, would add more than $500,000,000 to GE's total employment costs [15] in the next 2 years. The added cost burden, it said, "could destroy thousands upon thousands of jobs." The problems of 1960, the letter went on, were different from those in earlier years. GE was now faced with menacing competition from Japan and Europe as well as from domestic sources. Moreover, new communities were taking away business from older communities. [20] To meet these problems, it was imperative to maintain prices at levels that would attract customers and sales in increasing volume; only by doing so could employment be maintained at present levels. Additional employment costs would inevitably lead to loss of jobs by subtracting from GE's ability to compete. The letter also set out at length the Company's arguments in [25] answer to the principal justifications for increased wages and employee benefits given by the Union during the presentation of its demands but not answered by the Company at the time.[14] The letter also reiterated that it was GE's intent, when the time came, to make a fair and "firm" offer that would include "everything" shown by its total research to be in the common [30] best interests of employees, shareowners, and others

[14] The Union had justified its economic demands largely on the basis of productivity considerations, pointing particularly to GE's constantly [45] increasing sales and ever growing profits as contrasted to a declining employee complement. The Company's answering argument as given in its letter was substantially this: To maintain employment at present levels in the current competitive climate, it was essential to increase both the output per job and the volume of sales each year; to do so required [50] a constantly increasing investment per job in the form of improved equipment and facilities; and to attract investment capital it was necessary to have steadily rising profits.

concerned with the success of its business. Moreover, the Company by its offer would try to do everything it could to make sure that employees had no valid reason from *their* standpoint to strike or to permit themselves to have a strike imposed on them from above. In conclusion, the letter cautioned against acceptance [35] of the sincerity of Carey's recent statements that he neither expected or wanted a strike, suggesting that in truth Carey was "determined" for reasons of his own to strike GE in 1960, regardless of the fairness of GE's offer.[15]

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The July 1 Newsletter set out the basic lines of GE's employee communications program during the period beginning in early July (before the start of negotiations) and continuing through the end of August when the Company's offer was presented. The themes expressed in the Newsletter [5] were widely broadcast to employees in plant communication media, through news stories, articles, editorials and other means. The theme stressed above all was that the Union's "astronomical" demands, even if granted only in substantial part was bound to result in the destruction of numerous employee jobs. The communications constantly reiterated that [10] GE was now engaged

[15] Reference was made, *inter alia*, to a statement, "I owe GE a strike" attributed to Carey in an article relating to him that had appeared in [55] the July *1959* issue of "Steel," a trade magazine with a limited circulation in the metalworking industry. Though this is disputed, I accept the testimony of the reporter who interviewed Carey that the attributed statement was actually made. The quotation was picked up by GE long before the start of the 1960 negotiations and was constantly [60] reiterated by it in its employee communications as evidence of Carey's asserted determination to strike GE in 1960 for purely personal reasons. Carey in his personal contacts with GE officials had theretofore protested GE's use of the quotation, had claimed that it was inaccurate, and had sought to assure GE of his genuine desire to come to a peaceful agreement. This, however, did not deter GE from continuing its constant references to that statement in its employee communications.

in the greatest competitive struggle in its history; that maintenance of current levels of employment depended on GE's ability to compete successfully for customers and sales while at the same time maintaining profits sufficiently high to attract investment capital; that the Union's proposed remedial program for meeting the [15] problems of job security would only have an opposite effect by adding to GE's production costs at a time when it was vital to the best interests of all concerned with GE's success to keep such costs at a minimum; and that any substantial rise in employment costs would force GE out of markets and employees out of jobs.

[20] At the same time—particularly at the larger plants, although even there the nature, scope and content of the communications varied from plant to plant—GE plant publications continued to carry with steadily increasing frequency and volume articles, news reports, editorials, [25] displays and cartoons, indoctrinating employees with its views on certain specific bargaining issues and other topics outlined in "Communication Topics (Prior to Negotiations)," referred to above, and bearing also on related subjects, such as how good GE jobs were, the features of GE benefit plans, how profits create jobs, the danger of a strike being imposed on [30] employees by the Union's leadership, how strikes cause loss of orders and jobs, etc. The communications also sought to build up an image of the Company as the protector of employee interests, pointing up how the Company voluntarily sought to do what was "right" by engaging in careful research to determine employees' real needs and to fashion a fair and firm offer [35] that would give employees "everything" that was appropriately coming to them.

F. *The 1960 negotiations as a whole*

1. Arrangements for negotiations

[40] At the June 13 meeting, the Company had stated that it would take the Union's request for early negotiations under advisement. Having received no response, Carey wrote Moore on June 29, renewing the Union's request. Moore replied by letter on July 8. He stated that the mid-August [45] opening date contemplated by the contract should provide ample time to examine the Union's "familiar demands" in the pay and benefit areas. As for the Union's union shop and SUB demands, he added, the Company's "convictions," already well known to the Union from prior negotiations, had been reconfirmed by the Company's "continuous research." However, [50] recognizing the employees' concern over job security, Moore thought "it would not be amiss to meet early if the additional time is spent in a mutual exploration of any grass roots opportunities that may exist for improving employment continuity." On that basis, said Moore, the Company was ready to go forward with the Union's proposal for early negotiations, [55] starting July 19, with the first 6 days spent hearing from local IUE officials from each location where "you feel a problem is of sufficient importance to warrant this study," after which it might be desirable to call in ERMs from various plants to "give the national negotiators the benefit of their knowledge of the local situations." In a later communication [60] to the Union, Moore made clear that what he had in mind was to devote the early sessions exclusively "to discussions of the causes of such unemployment as appears at the plant

level and the solutions that may be seen by those closest to the problem."

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Carey quickly agreed to the suggested early opening date but objected to Moore's proposed limitations on the scope and purpose of the early meetings. He declared that the Union wanted full negotiations, although it was prepared to begin with the subject of employment security.

[5] After a further exchange of communications, and a preliminary procedural meeting held between GE and IUE representatives, the parties finally agreed that the early meetings should be negotiating and not simply review sessions. More specifically the parties agreed as follows: [10] The early negotiations would start the following day, July 19, with employment security as the first subject on the agenda. If agreement was reached on employment security prior to August 16, the parties would proceed to other subjects at once. If no agreement on employment security was reached by August 15, the parties would then go on to other matters, [15] but employment security would remain a subject for negotiations.[16]

At the July 18 meeting, the parties also agreed on a schedule of meeting dates for the negotiations as a whole, extending through September. It was also agreed, *inter alia*, that there would be no meetings [20] between September 8 and September 20, because of the IUE convention that was scheduled for the week of September 12.

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[16] In a teletype to ERMs sent out that day, GE took full credit for the start of early negotiations. The teletype stated, "The *Company* proposal to begin negotiations a full month ahead of schedule for the purpose of [60] concentrating on the subject of employment security was accepted by union officials." (Emphasis added.) The substance of the teletype was thereafter published in plant communication media.

2. Chronology of more significant dates and events

[25] Formal negotiations opened on July 19, 1960, and continued at some 45 meetings over a period of approximately 3 months, ending on October 22, 1960, during the last 3 weeks of which the Union was on strike. The course of the negotiations, along with related events which occurred [30] away from the bargaining table, will be reviewed at length below. It may be helpful, however, in order that ready reference may be available at one place for clearer focus, to set forth at the outset a table listing the more important dates which mark phases or turning points in the history of negotiations to be recounted below. The table follows:

[35] *July 19-August 11, 1960:* Early negotiations limited to the subject of employment security.

August 1, 1960: Union serves notice of termination of the [40] 1955-1960 agreement on its October 1, 1960, expiration date.

August 16, 1960: Negotiations on the Union's general demands begin.

[45] *August 29 and August 30, 1960:* The Company, informally on August 29 and formally on August 30, presents its offer to the Union.

September 8, 1960: Negotiations are suspended until September 20 because of the IUE convention.

[50] *September 13, 1960:* Resolution adopted at the IUE convention calling for a vote by IUE locals in the GE chain on Sunday, September 25, on the recommendation of IUE

negotiating committee to reject the Company's [55] offer in its then present form.

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September 16, 1960: The Company launches a campaign to induce local officials and unit employees to change the time, place and conditions of voting and to influence employees to vote against striking, stressing, *inter alia,* the finality of its offer and its fixed policy not to make [5] concessions to avoid a strike or threat of strike.

September 20, 1960: Negotiations resume. GE declares that its full offer is on the table and that there is nothing more to come.[17] On the same day, GE authorizes its local general managers to put into [10] effect for nonrepresented employees wages and benefits contained in its basic offer to IUE and other unions.

September 21, 1960: The Federal Conciliation and Mediation Service enters the negotiations at the request of the Union.

[15] *September 22, 1960:* The Union presents a written request for information relevant to bargaining issues, embodying in part the content of prior requests not granted. The request is not complied with except in part and then only after the end of the strike.

[20] *September 29, 1960:* GE rejects Mediators' proposal for a truce on the basis of an extension of 1955-1960 agreement beyond its October 1, 1960, expiration date and states the conditions under which it plans to continue operations after the contract expiration date.

[60] [17] The extent to which modifications were thereafter made in GE's offer and the character of such modifications will be considered *infra.*

[25] *September 30-October 4, 1960:* GE offers IUE's Schenectady and Pittsfield locals strike truce terms on conditions more favorable than it had theretofore offered the IUE national negotiations.

[30] *October 2, 1960:* The Union strikes. Negotiating meetings continue.

October 10-October 20, 1960: GE engages in additional conduct alleged by the General Counsel to constitute direct local bargaining in derogation of the IUE's status as the national representative.

[35] *October 19, 1960:* The Company declares that negotiations have reached an impasse.

October 19 to 22, 1960: The Union capitulates. Negotiations are [40] conducted for a strike settlement.

October 22, 1960: The strike ends.

October 27 to November 23, 1960: Meetings are held for the [45] purpose of drafting definitive contract language and to settle certain items theretofore left open.

November 10, 1960: New 3-year agreement is concluded and signed.

[50] 3. Employee communication during the period of negotiations—in general

As earlier noted, GE declares it to be its policy to keep employees informed of the progress of negotiations so that they may form their own [55] independent judgments on the issues involved and guide their bargaining agent accordingly. While formal negotiations were in progress in 1960, GE headquarters sent to its plant locations, in most

cases by teletype, daily reports on the negotiations. The reports were prepared by communication

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specialists employed in a company service component under the jurisdiction of Moore. They were utilized at the plant levels for purposes of employee communication. At some plants the teletyped accounts were published substantially in full in daily negotiation bulletins or other media of [5] employee communication; at others only the highlights were given either daily or at broader intervals. At least at some plants, the reports purported to provide the employees with a *full* account of what occurred in the conference room. But a comparison of the reports with the negotiating minutes shows that not to be true. The accounts given were slanted in [10] the Company's favor, sometimes presented the Company's arguments to the employees more fully than the Company did at the bargaining table, frequently failed to present the Union's position at all, and, when stating the Union's contentions, often did so in a manner so abbreviated or editoralized as to give an inaccurate or unfavorable impression of the [15] Union's position on the issues. The reports seized almost every occasion that presented itself to disparage, belittle or ridicule the Union's principal negotiator by pointing up behavior at the bargaining table as well as positions taken by him in such a manner as to cast him in an unfavorable light.[18]

[18] This is not to suggest that the Company's criticism of Carey's behavior [30] was altogether without foundation. Carey by some of his behavior at the bargaining table exposed himself to and invited much of it. The negotiating minutes reveal Carey as an aggressive, highly articulate and voluble negotiator with a bent for tough talk and invective. He obviously felt frustrated by his

(Footnote continued on following page)

[20] The communications to employees, however, were not limited to reports on the progress of negotiations. Throughout the period of negotiations, the employees were subjected to other communications relating to the negotiations in the form of plant newspapers, employee bulletins, [25] leaflets, letters to employees' homes, newspaper advertisements, press releases and radio and telephone messages.[19] GE also communicated with

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(Footnote continued from preceding page)

failure to get anywhere in the [35] negotiations and showed it. He engaged on occasions in time-consuming harangues and not infrequently in side excursions into perhaps interesting but wholly irrelevant subjects. On a number of occasions, he displayed an explosive temper (several times to the point of threatening physical violence) and was frequently uninhibited and a few times wholly [40] unrestrained in expressing his opinion (low) of some of the Company's negotiators. He was at times also highly critical of GE top management. The Respondent in its brief makes much of Carey's behavior at the bargaining table, devoting some 42 pages to excerpts from its negotiating minutes bearing on that subject. The Respondent makes no claim, [45] however, that Carey's conduct influenced the actual course of bargaining in any substantial way. I am satisfied that it did not. It is quite clear from the record as a whole that the Company planned from the beginning to downgrade Carey in its employee communications program relating to the negotiation. (See, *e.g.*, "Communication Topics (Prior [50] to Negotiations)".) Carey's conduct adverted to above provided the Company, I believe, with not unwelcome ammunition with which to do so.

[19] Not all the written publications are in evidence. The General Counsel and the Respondent, pursuant to a stipulation to limit proof, each selected the publications of three of the larger and five of the smaller [55] IUE-represented GE plants as a sampling to show the range and character of the Company's communications to its employees and the general public between June 13, 1960, and October 24, 1960. These exhibits alone occupy a full drawer of a standard sized filing cabinet. The communications at the various plants, although in major respects similar in theme, are [60] by no means identical, and also vary greatly as to their volume. In the case of some multidepartment plants, not all communications went to all employees. The General Counsel selected the following larger plants (with the number of separate communications for each [50] plant shown in parentheses): Schenectady, New York (246); Pittsfield, Massachusetts (277); and Bridgeport, Connecticut (152). He selected the following smaller plants: Rome, Georgia (115); Burlington, Vermont (143); Tyler, Texas (65); Memphis, Tennessee (43); and Waterford, New York (60). The Respondent selected from larger plants: [55] Fort Wayne, Indiana (142); Louisville, Kentucky (243); and Philadelphia, Pennsylvania (118). It selected the following smaller plants: Jonesboro, Arkansas (21); Newark, New Jersey (44); Linton, Indiana (29); Fitchburg, Massachusetts (40); and New Kensington, Pennsylvania (17)

employees at plant meetings and through supervisors' man-to-man contacts with employees. The communications grew in number during September and October. During that 2-month period a typical employee at some of the larger plants was exposed to well over 100 separate communications in one [5] form or another concerning matters related to the negotiations, and on many days he was subjected to at least 2 and sometimes to as many as 3 or 4. The last does not take into account oral communications by supervisors, as to the precise volume of which there is no specific evidence in the record.

[10] The communications were geared to the developing stages of the negotiations. This aspect of the case will be more particularly considered below as the course of negotiations and related events is reviewed. Broadly speaking, however, the communications prior to August 30—the date GE presented its offer—were primarily directed at conditioning employee [15] attitudes and opinions in the manner and along the lines earlier referred to. Following announcement of GE's offer, the employees were flooded with communications aimed at persuading them that the Company's package offer had been designed after careful research to meet their needs and that its acceptance was in their best interests. After passage of the IUE convention [20] resolution calling for a vote by locals on GE's offer, the same program continued, but the communications now stressed that the Company had gone as far as it could without jeopardizing the future of its business and the security of employees' jobs; that its final offer was now on the table with no more to come; and that it was its policy not to yield concessions because [25] of a strike or threat of

strike, regardless of the strike's duration. The General Counsel and the Union claim that at some plants the Union's communications went further and made statements and declarations of a coercive character to induce employee withdrawal of their support of union positions. But of all this, more, later.

[30] The communications, particularly after the negotiations recessed for the IUE convention, also unmistakably disclose an effort on the Company's part to undermine employee faith and confidence in positions espoused by the Union, by disparaging and attacking the motives of the IUE [35] top leadership, especially those of Carey. That tactic, as has been seen, was suggested as far back as November 1959 when "Communication Topics (Prior to Negotiations)" was drawn up. The Company's effort to discredit Carey actually began in muted tones even before the start of negotiations, and continued throughout its course, gradually mounting in intensity, reaching [40] a high point, thereafter maintained, when the negotiations recessed for the IUE convention. Through constant suggestions and adverse references, the communication sought to portray Carey as an irresponsible, self-seeking leader primarily concerned, not with the best interests of the employees, but with the furtherance of his own personal and political ambitions, and [45] therefore determined to lead the employees down the path of a job-destroying strike.

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The Union also communicated with employees during the negotiation period, but, perhaps because it lacks GE's resources, not nearly on the scale the Company did, at least

as far as written communications are concerned.[20] In some instances the Union's written communications dealt [5] with bargaining issues, expressing sharp criticism of the Company's offer and of the Company itself and advancing arguments in support of the Union's demands. In the main, however, the communications, particularly those released on a local level, confined themselves to exhorting employees to maintain their union solidarity and not be taken in, intimidated, or [10] deceived by what they characterized as the Company's massive propaganda campaign directed at alienating employee support of the Union. So far as appears, the Union made no attempt, at least in written communications, to report to employees the daily course of negotiations, as did the Company. To what extent this may have been done through personal contacts [15] of local officials with union members or at local union meetings, the record does not show.

G. *The early meetings on the subject of employment security—July 19* [20] *to August 11*

On July 19, 1960, the GE and IUE negotiating committees, led by Moore and Carey respectively, met as scheduled to conduct early negotiations on the subject of employment security. Twelve meetings limited to that [25]

[20] The IUE has a biweekly newspaper, the *IUE News*, which goes to all its members, not just to those in the GE chain. The regular issues of the *IUE News* published during the early period of negotiations dealt only in small part with the GE negotiations. Stories relating to the GE [55] negotiations were, however, featured during the months of September and October. In addition, a special issue of the *IUE News*, released shortly after the IUE convention, dealt entirely with the GE situation. Constituent IUE locals in the GE chain also from time to time published material relating to the negotiations, mostly in the form of mimeographed [60] leaflets. Their number, however, was but a small fraction of the tremendous volume of literature GE put out at the same plants.

subject were held between July 19 and August 11, 1960. These meetings were later to be characterized in a GE publication as "listening sessions."

The first six meetings were devoted to the presentation and discussion of the Union's employment security proposals calling for [30] (1) establishment of a joint committee on automation; (2) limitations on overtime work while other employees were on layoff or working a short week; (3) limitations on subcontracting under similar circumstances; (4) the right of employees to move with their jobs transferred to other plants; (5) supplementary employment benefits (SUB); (6) separation pay—at the rate [35] of 1 week's pay for each year of service in excess of 2—for all employees laid off for more than 12 months.[21]

The Company criticized the Union's proposals as a whole, asserting they were directed primarily to the effects rather than the solution of the [40] problem of employment instability. The Company took the position, frequently reiterated, that the negotiators should approach the subject at hand, not through consideration of specific proposals, but by seeking to identify through persons having direct knowledge of the facts the "causes and sources" of employment instability at plant levels. Nevertheless, [45] during the course of the Union's presentation, the Company, in some instances only after considerable prodding by union negotiators, did discuss with the Union in specific terms the latter's demands, and declared its positions thereon.

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[21] The existing contract already made provision for termination pay in the event of plant closings.

The Company opposed SUB largely on the basis of principle.[22] It expressed no position at all on separation pay, the only other item in the Union's demands, which, as the Company in effect conceded, would have involved substantial additional costs.

[5] As to the Union's proposal that employees be given the right to transfer with their work, Moore stated when that proposal was presented that he was unaware of any company policy that would bar an employee from following his work but that he wanted more information on local practices. [10] When the Union asked why it would not be possible to draft a simple understanding providing that employees should have the right to go to new plants with their jobs, Moore stated in effect the Company had studied and would continue to study that question, but that his only immediate concern was "to find the causes and sources" of the various employment [15] security problems. At a subsequent meeting, however, Moore stated that the Company was opposed in principle to the proposal as well as unspecified others because it was an invasion of management's rights.

GE opposed the Union's proposals for a committee on [20] automation, giving as its reason that such a committee could not solve the problem of employment stability. It also stated that no special committee was needed, as the local union could sit down with local management, utilizing the collective bargaining procedure, to discuss any specific

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[35] [22] Although agreeing that unemployment compensation benefits in many States were inadequate and should be raised to 50 percent of average pay, the Company stated that as a matter of principle it believed that the situation should be corrected by amending State laws rather [60] than through contracts applicable to individual employers. It also stated that SUB costs added to the problem of job insecurity.

automation problems it might have. But the Company did not reply [25] when the Union pointed out that the national agreement made no provision for discussion of automation questions on a local level. Subsequently, when the Union suggested that automation committees on national and local levels might function outside the grievance procedure, the Company rejected that approach, terming it a "share the management" proposition.

[30] With respect to the Union's proposals for overtime and farm-out restrictions, the Company took the position generally that these were not appropriate matters for the national agreement but should be left for discussion by local unions with local managements. Significantly, however, [35] at a much later meeting, on September 27, in response to a question by the Union, the Company declared that it flatly objected to having the Union's noneconomic employment security proposals negotiated even on a local level as this "would get into the area of management rights."

[40] At various times in the course of the Union's presentation, the Company asserted that the Union had presented no constructive solution to the problem of employment security. The Union requested GE to present its own solution, making it clear that it was not wedded to its own proposals. On a number of occasions the Union requested GE to place its [45] own employment-security proposals on the bargaining table prior to August 11, the date the early meetings limited to the subject of employment security were scheduled to end. Moore replied that the Company did not have a proposal written up and ready to put on the table. What the Company wanted to do first, Moore said,

was to explore the pros and cons [50] of what was needed and useful for employees. And toward that end the Company considered it necessary for the negotiators to have more information from plant sources identifying the "causes and sources of employment insecurity" and showing what had been done or could be done to alleviate them.

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Beginning with the session of August 2 and continuing through six bargaining meetings ending on August 11, the Company made its presentations. At the first 5 meetings, the Company brought in some 10 employment relations managers from as many plants who, on the basis of [5] previously prepared texts made presentations concerning the employment situations at their respective plants. Generally speaking, the presentations dealt with the extent, if any, to which employment instability was—or was not—a problem in the respective plants and with the measures which management itself had taken and was taking to stabilize employment through [10] manpower planning and other measures. In some instances the presentations also underscored how problems growing out of such factors as automation, "farm-out," overtime scheduling or transfer of operations were either nonexistent at the particular plant or had been eliminated or minimized through corrective measures or practices voluntarily undertaken by [15] management. Through its presentations, the Company also sought to point up that the causes of unemployment instability varied widely from plant to plant; that highly competitive market conditions were the most serious potential cause of employment instability; and that the solution to the problem was rooted in customers and sales.

[20] At the sixth and final session on August 11, the Company presented a detailed economic analysis, also from a previously prepared text, summarizing the factors affecting employment and unemployment in the nation as a whole and in GE in particular. The analysis pointed up, [25] *inter alia*, the serious and growing impact of foreign competition on GE's operations, the importance of attracting customers and sales to assure steady employment, the linkage between profits and job, and the operating measures GE itself had taken and intended to take to protect job security. The presentation also sought to show why GE's practices with respect to [30] subcontracting and overtime scheduling were desirable and in the long term interest of employees, and why any restriction thereon beyond those self-imposed by the Company would imperil employee job security.

Prior to making the August 11 presentation, Moore told Carey [35] that he was sure the Union would find the presentation "interesting" and "useful" because the Company planned to make it "a subject in the local communications in the future." All of the Company's presentations were thereafter printed in monograph form and released to ERMs at all plant locations with the suggestion that the ERMs make use of the material [40] in any way you feel that it can be helpful in your local situation."

Before the ERMs made their presentations, Moore had assured the Union that the ERMs would be ready to answer any questions related thereto. Nevertheless, the Company thereafter strictly circumscribed the area of [45] union questioning by refusing to allow the ERMs to express their views as to the desirability, feasibility or practicality of

applying the Union's specific employment security proposals to their respective locations. The union negotiators sought to extract such information on a number of occasions. Each time they were blocked either by Moore or by the ERMs [50] themselves. The Union was told that the ERMs had not appeared for that purpose and that only Moore could or would comment on the Union's specific proposals.

The union negotiators complained from the beginning that the [55] lengthy oral presentations from prepared texts were a waste of time. They stated that the material should be presented in written form; that the Company should submit its proposals on employment security; and that the remaining time scheduled for consideration of the employment security subject should be devoted to collective bargaining, which, the Union stated, [60] could only really begin after the proposals of both sides were on the table. With this the Company disagreed. It stated that the presentations being made were part of the process of collective bargaining. The information

being supplied by the local managers, asserted the Company, was needed by GE's national negotiators for fact-finding purposes. In point of fact, as the record adequately shows, although this was in part disputed by one company witness, the material contained in GE's presentation at the [5] bargaining meetings was already known to its negotiators, having theretofore been presented to them at a meeting of the plant ERMs held in New York about a week before the negotiations began.

At the close of the August 11 meeting, Moore read a statement [10] in which he declared, *inter alia,* that the Company did not have any part of its offer "actually in being," but that ". . . we sincerely believe that we should have some proposals in our forthcoming offer that are aimed at lessening—within limits available—the effects of [job] instability." When—as will later be seen—the Company did present its overall offer [15] at the end of the same month, the offer contained provisions related to the subject of employment security, more specifically, a program for retraining and reassignment and for income extension aid.

However, during the 4 weeks of early negotiations, the Company [20] gave no indication whatever of the employment security program which it eventually included in its overall offer, later presented substantially simultaneously to the IUE and other unions. The Union was thus afforded no opporunity to consider or comment on the Company's proposals during the sessions specifically set aside for the negotiation of an agreement [25] on employment security. The Company asserts that it said nothing of its forthcoming proposals on employment security because it had not yet decided upon its offer at the time. The evidence shows, to be sure, that the Company's overall offer was not *finally* decided upon until several days before it was presented.[23] But the record also shows that the Company's [30] eventual offer, although not finalized at the time of the early negotiations, had been in the process of

[23] This was questioned at the hearing by the General Counsel and the [40] Union. Both spent considerable time attempting to develop through cross examination of the Company's witnesses that the Company's overall offer was already finally settled upon and known to the Company's negotiators before the early negotiations began. Their efforts in that direction, however, fell short of the mark.

evolution for many months theretofore and had already reached an advanced stage of development by the time the early negotiations began.[24] And there is reason to believe that the Company's ultimate employment security proposals, even though not finally buttoned [35] down, were at least within the area of the Company's contemplation at the time.[25]

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At any rate, it is quite clear that one of the Company's reasons for not having a proposal on employment security ready was that the Company *never intended to reach an accord on that subject during the period of early negotiations*, notwithstanding the understanding upon which the [5] early negotiations were entered into. Indeed, that much was virtually conceded by Thomas F. Hilbert, GE's labor relations counsel and one of its principal negotiators. Asked whether there was any reason why the Company did not have an offer in existence which could have been made during the month of discussion, Hilbert testified:

> [10] No, it is that we wanted to see what the Union had . . . and what the effects of our presentation on employment security were and then we wanted to go into other areas of discussion to get as full a discus-

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[45] [24] In fact, by June 1960, the officers and other officials responsible for drafting the Company's proposal had already made two presentations to GE's principal executive officers and division general managers. Moreover, by that time, cost estimates on a companywide basis of the various alternatives under consideration had been prepared.

[50] [25] Moore conceded while testifying that during the period of early negotiations he had been thinking about at least one of the principal features of the income extension aid program later proposed. His only explanation for not mentioning it at all was that it "would be something less than high standards of negotiations to indicate [55] commitments on specific items." Moore's testimony elsewhere also discloses that during his trip around the GE circuit in early 1960, the subjects of retraining and reassignment and income extension aid came up as subjects of discussion with general managers.

sion as we could of [15] the elements of the Union demands.

This was stated in even more explicit language in one of the Company's plant publications issued the day after the early negotiations ended. The GE News published at Louisville, Kentucky, on August 12, 1960, after declaring [20] that the early sessions were only "fact finding sessions," stated:

> There was no intent on the part of the Company to reach an "agreement" or solution to this complex problem during the initial four weeks of talk.

[25] GE utilized the early negotiations as a springboard from which to present directly to employees its views on the employment security issues. This was done through teletyped accounts of the meetings that were used in turn by plant ERMs as source material for transmittal to employees [30] via the plant communication channels. The teletyped accounts were onesided; the positions of the Company were extolled and those of the Union either not mentioned at all or mentioned only to be deprecated. On several occasions, the Union at the meetings complained about the incompleteness of the reports made to employees, but to no avail. The [35] presentations made by plant ERMs to the national negotiators were in some instances also communicated to employees at the particular plants covered thereby. At least at one plant—Bridgeport—this was done orally at a series of informative employee meetings. The principal points stressed in the communications were that the Union's proposals could not solve the [40] problem of employment instability; that this could be done only through customers and sales and through the Company's own voluntarily undertaken efforts to correct the causes

of employment instability. The monograph based on the August 11 presentation was also widely used as source material in plant communication media for the purpose of impressing the Company's [45] arguments directly upon employees.

In his brief, the General Counsel in effect requests a finding that the Respondent entered upon the first 4 weeks of "negotiations" without any intent of negotiating on the subject of employment security [50] in the sense agreed to on July 18, but rather with the intent of utilizing the occasion for the two-fold purpose of (1) impressing upon employees that it was genuinely concerned with the problem of employment security and was working hard to alleviate the sources and causes of that problem, and (2) presenting to employees, more than to the Union, its position and [55] arguments on the employment-security issues involved in the negotiations. The totality of circumstances present in this record validly supports, I find, an inference to that general effect.

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H. *Meetings on Union's general demands, prior to submission of GE offer, August 16 to 25*

[5] Six meetings were held between August 16 and 25. The Union presented its justifications in support of its demands for a union shop, revisions of noneconomic terms in the national agreement, improvements in the pension and insurance plans, a general wage increase, improvements in vacations and holidays, and other proposed contract changes not [10] covered at the early employment se-

curity meetings. GE took the general position during these meetings that it was interested in ascertaining the facts on which to base its determination of what should appropriately be included in its offer. GE, however, did not decline to discuss the Union's demands. As to many of the demands, principally in the area of [15] noneconomic contract changes, GE declared a position. It was almost invariably one of rejection. GE gave as its reasons for rejection, in the case of the union shop, that it was opposed to this on principle, and in the case of other changes, that they were either too costly, or would be too difficult to administer, or would deprive the Company of flexibility. [20] As to other union demands, GE indicated that it was not satisfied with the Union's presentation and needed more facts and justifications. In a few instances, such as the Union's requests for weekly instead of biweekly dues deductions and for an added holiday, the Company stated that it would "give consideration" to the Union's proposals. The Company refused, [25] however, to commit itself as to any of the demands, declaring that it did not engage in bargaining on an item-by-item basis, although it did regard itself as obliged to go through and consider the Union's demands *seriatim*.

[30] During this period GE did not submit any proposals of its own. While leaving no doubt that the Union's economic demands were unacceptable to it, GE declined to give any indication of what it was *affirmatively* thinking on the subjects of wage increases, pensions, insurance, or other economic benefits, except to make clear that it intended to eliminate the [35] cost-of-living escalator.[26] GE

[26] During this period, the Company cited the Union's election to terminate [60] the then current contract as a justification for its decision to eliminate the escalator clause. Subsequently, the Company agreed that that was not the true reason for its decision.

stated that it was still attempting to assemble a common body of facts as a basis for negotiation and that its position on all issues would become known when its offer was eventually prepared and presented.

[40] At various times, the Union asked GE to declare itself on how much it had available for its entire package so that the Union might suggest how it desired the available amount to be apportioned among the various economic benefits it sought. Although the Union indicated that it might be prepared to modify or rearrange its original demands accordingly, [45] GE chose to ignore that request. GE, in turn, sought to have the Union declare itself on the order of priority it gave its various demands, but the Union refused to do so, stating at that point that all its demands were "musts."

[50] On a number of occasions during this period, the Union requested information. But its requests were either ignored or brushed aside. Thus, on August 18, during a discussion of the Union's proposal to eliminate certain deductibles from insurance benefits, Swire, the Union's pension and insurance expert, asked Willis, the Company's benefits [55] specialist, the cost to the Company of eliminating the deductibles. Willis replied that he did not have the figures. When Swire asked Willis to confirm

a figure of one-half cent per hour, which Willis had assertedly used in a speech, Willis stated, "I don't talk in figures." But later when the Union's pension proposals were being considered, Willis objected to them on the ground: "They will cost a lot." On August 24, during a

discussion [5] of the Union's proposal for a fourth week of vacation for employees with more than 20 years' service, the Union asked the Company for figures on the number of employees falling within that category. The Company stated that it did not have that information. In point of fact, as will later appear, that information could have been obtained by it. Again while the [10] Union's sick leave proposal was the subject of the discussion, the Company termed the Union's demand an "expensive" one. But it made no reply when asked for its estimate of the cost.

At the end of the six bargaining sessions, the parties were no [15] nearer agreement than at the beginning. The Union charged the Company with stalling. Declaring that it was not there for educational purposes and that negotiations did not really begin until the proposals of both sides were on the table, the Union urged the Company to come forward with its offer.

[20] In the meantime, GE's plant communications program continued along the lines earlier stated, with constant reiteration of its arguments concerning competition, sales and profits and the dependence of jobs on GE's ability to keep its costs down. In anticipation of the Company's [25] forthcoming proposal, the communications now also restated GE's declared bargaining policy. They stressed the careful research and other practices that GE engaged in to assure that its offer would be "right," its fair, firm offer approach, its unwillingness to engage in haggling or horsetrading, and its refusal to make concessions beyond what it believed to be [30] right because of a show of belligerence by union officials. The communications during this period also criticized the Union's demands and the

Union's concept of collective bargaining. The Union was accused of being disinterested in facts. Its unwillingness to rank its bargaining demands in the order of their priority was particularly scored.

[35] I. *August 29 and 30: GE presents its offer to the Union*

In the evening of August 29, Carey and Callahan met with Parker [40] and Moore for a dinner meeting, at Moore's request. The purpose of the meeting was to give the IUE representatives a preview of the offer which Moore stated GE planned formally to present the next day to the IUE and to the UE and thereafter to some 100 other unions. Moore read a summary of the Company's offer from notes, stating that no written copy was then [45] available. The offer which Moore outlined on August 29 was formally presented to the IUE in writing at a regular bargaining session the following day. The proposals provided in substance for the following:

1. *Contract duration*: October 2, 1960 to September 29, 1963.

[50] 2. *Wages*: 3% increase effective October 2, 1960; 4% increase, effective April 2, 1962; no cost-of-living escalator.[27]

3. *Retraining and Reassignment*: Local management at its [55] discretion may offer an employee having 3 years or more service a retraining or reassignment opportunity in another job at 95% of the job rate of his former job in

[60] [27] The Union's proposal had asked for annual productivity increases of 3½ percent and for continuance of the escalator clause.

order to equip the employee prior to any layoff for another job requiring other skills. The period of training would not exceed one week for each year of service. Disputes would not be subject to arbitration.[28]

[5] 4. *Income Extension Aid*: This made available for an employee with 3 or more years service and not eligible for optional retirement a fund equal to one week's pay for each year service for use in the event of layoff or plant closing. [10] The fund could be drawn upon under 4 options: (a) as payment for tuition while attending a recognized school during a period of layoff to train for another job; (b) as a lump sum payment available to the laid-off employee provided he elected within 60 days after his layoff to [15] terminate his employment and forego recall rights and service credits—but this option was available only if management determined the layoff would exceed 6 months; (c) as weekly income at the rate of 50% of normal pay if the laid-off employee remained unemployed after exhaustion of State [20] unemployment compensation benefits; or (d) as a lump sum

[35] [28] The Union had not asked for this "employment security" provision. The Company had never mentioned it as contemplated at any of the earlier negotiating meetings. The Company originally proposed to insert the "R & R" provision as well as the Income Extension Aid provisions in the [40] Pension and Insurance Agreement so as to make clear that disputes arising thereunder would not be arbitrable. Later in the negotiations, however, the Company agreed that these provisions might be put in the National Agreement, with the express understanding, however, that arbitration procedures would not extend to them. The Respondent in its brief points [45] to this as a "concession," but it is quite clear that the transfer did not involve any substantive change.

payment on plant closing—the last option modifying and superseding a provision for termination pay on plant closing contained in the 1955-1960 agreement.[29]

[25] 5. *An Emergency Aid Plan*: Exclusively under management control, providing for loans or grants not to exceed $500 in serious emergencies. This plan was not to be effective at any IUE location until all existing local Relief and Loan plans were liquidated.[30]

[30] 6. *Pension Plan improvements.*[31]

7. *Insurance Plan improvements.*[32]

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8. *Contract changes:* The Companys proposal contained 3 items: (a) to allow local negotiations on the subject of weekly checkoff; (b) to allow local unions and local

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[29] The "IEA" was new. It had not been discussed with the Union in prior negotiations. The only thing in the Union's proposals resembling it in part was the Union's demand for separation pay for employees with 2 or [50] more years' service who were laid off for more than 12 months. The Union's SUB demand involved a different concept.

[30] A number of IUE locals had such Relief and Loan plans which were controlled by the employees or under a joint arrangement with management. This proposal was neither requested by the IUE nor desired by it on the [55] condition stated.

[31] The Company's proposal contained some six improvements in the Pension Plan. Three involved changes which did not reflect any proposal made by the Union, one involved a change substantially as proposed by the Union, and two reflected in part union-proposed changes. The proposal in effect [60] rejected other changes the Union had proposed.

[32] Here, too, the Company's proposal contained some six improvements. At least two concerned items not raised by the Union. Only one was precisely in the terms proposed by the Union, amount of benefits aside. [50] The Union's basic proposals were rejected. John Morris, a company consultant on insurance costs, testified that the improvements proposed by the Company were basically different from those proposed by the Union, "an entirely different scheme of things."

managements to negotiate to substitute a different [5] holiday for any of the listed ones; (c) to allow death in family time and jury duty time to be considered as time worked for purposes of qualifying for holiday pay; and (d) to increase maximum leave for Union officials from [10] 5 to 8 years.[33]

At the August 29 informal meeting, Carey and Callahan expressed themselves immediately as being opposed to the company offer, protesting that it was not responsive to the Union's proposals. The union representatives voiced their strong disapproval, among other things, to the Company's [15] elimination of the cost-of-living escalator provision, commenting that a 3-year contract without escalation and without opportunity to review wage trends was wholly unacceptable. Moore at once asked what they thought would be an adequate provision on that point. They wanted a continuation of the escalator clause, the union representatives replied. Moore then [20] asked whether the Union would consider a wage reopener during the 3-year contract term, at the same time making it "plain," as appears from his testimony, that he "was not offering [the reopener] at that meeting because it was not a bargaining session." The Union did not respond to that [25] suggestion, expressing neither approval or disapproval.

Carey asked the Company to refrain from presenting its offer to the IUE negotiating committee the next day,

[33] As to (a), the Union had asked for weekly dues deduction at the request [55] of a local without further negotiation; as to (b) and (c), these had not been specifically requested by the Union at all; as to (d) the Union had requested elimination of the 5-year maximum on total leave for union officials. These items were all of a relatively minor nature as compared to many other more basic requests for contract [60] changes which the Union had requested and which were rejected.

and also to withhold its release to other unions and the press. To do so, Carey said, would tend to "freeze" the Company's position and place it on a collision course. [30] Carey urged that before the Company became publicly committed to its offer, there should be further discussion by those present to see what could be done about changing the Company's proposals to make them more acceptable as a basis for negotiations. The Company's representatives rejected Carey's request. They said they did not consider that meeting a proper [35] place to discuss the Company's proposals, as it was not a formal negotiating session, only a courtesy preview meeting. The offer they had come up with, they said in substance, was the product of great effort, extensive research and surveys and careful consideration of all relevant factors. The Company considered it the best offer it could make in the balanced best [40] interests of employees and everyone else concerned, and one, moreover, that the union representatives could "sell." This was the offer the Company was going to make. And the plan to present it to the IUE and the UE the following day would not be altered. They would, however, withhold public announcement and presentation of the offer to other unions until the full [45] IUE negotiating committee had had an opportunity to consider it and give the company negotiators some feel as to whether agreement was imminent.

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At the negotiating meeting on August 30, the Company formally presented its offer to the IUE negotiating com-

mittee.[34] Immediately following the reading, Moore announced that the Company was including in its offer an option to reopen the contract on April 1, 1962, for wage [5] negotiations with no commitment for a further wage increase at that time, as an alternative to the proposed second phase wage increase effective that date.

Carey again decsribed the Company's proposal as unresponsive. [10] He proposed that the next 3 days be spent negotiating without the pressures and glare of publicity, with the company offer serving as a basis for discussion. And he again urged Moore not to publicize the offer and thereby freeze the Company's position. Moore responded that the Company had not held back anything, and that its proposal was not just the first [15] of a series that would be put on the table. The Company, Moore added, felt that the employees should know what was on the table.[35] Moore stated, however, that if the Union

[34] During the reading of the Company's offer, a union negotiator asked [35] Moore whether the existing 10 percent cost-of-living adders were being incorporated in the base rates. Moore replied, "We haven't decided yet." There is only one other reference throughout the negotiation minutes to the cost-of-living adders. That appears in the September 7 minutes in the form of a peripheral and somewhat obscure colloquy in which, as [40] nearly as I can gather, Moore disclaimed an intent at any time not to carry over into the new proposed contract the 10 percent cost-of-living adders. To have excluded the adders quite obviously would have resulted in a 7 percent immediate reduction in employees' pay rather than in a 3 percent increase as represented by the Company to the Union and in [45] its communication to employees. Notwithstanding Moore's above-quoted remark, I think it clear that the Company never seriously contemplated excluding the adders. The comments made here are relevant only because the Respondent in its brief—relying solely on the August 30 and September 7 colloquies above referred to—lists the ultimate inclusion [50] of the cost-of-living adders in the base rates as a change made in the Company's original offer as a result of subsequent negotiations. I find this to be inaccurate.

[35] In a subsequent teletype to ERMs in the form of a suggested letter to employees, Carey's request for a 3-day news blackout was criticized, the [55] Company declaring that it was unwilling to hide facts from employees.

wanted more time to consider the proposal, the Company would hold up its release until the following day.[36]

[20] At the opening of the session on August 31, the Company announced that its offer was being released to the plants.

J. GE presents its offer directly to employees

[25] On August 29, prior to the offer preview meeting that evening, the Company had held a meeting of its plant ERMs in New York. The ERMs were each given a package consisting of a script of a tape recording discussing GE's 1960 proposal; reproductions of slides to be used in [30] presenting that proposal to employees; copies of GE's offer letters to IUE and UE and a form of GE's offer letter for unions other than IUE and UE;[37] a series of questions and answers about GE's proposals; a copy of

a GE News Special Edition describing the 1960 program in detail; a model newspaper ad designed as a report to GE plant communities concerning the contents and virtues of the GE 1960 proposal; and a document entitled "Communications Program Information." The last mentioned document adverted [5] to the foregoing materials and other materials to be supplied, including daily bulletins to be distributed to employees highlighting various features of

[36] Other aspects of the August 30 meeting will be treated in the subsection below dealing with the general course of negotiations between August 30 and September 8.

[37] The offer letters to the IUE and to other unions were identical so far [60] as the economic offer was concerned, with immaterial exceptions, even to the statement in the last paragraph that "certain elements of the offer reflect our acceptance of concepts proposed by your bargaining committee."

the offer, letters to employees' homes emphasizing the significance of the offer, press releases and radio and television messages. It also contained recommendations as to the use of the materials "to help [10] the components inform their managers, supervisors, employees and others regarding [GE's] offer." It was suggested, *inter alia*, that a copy of the script be given to all supervisors "so that they will be prepared to answer questions raised by employees regarding any point made in the presentation."

[15] The script, entitled "General Electric's 1960 Proposal for Job Opportunity and Better Security,"[38] set forth and explained the Company's proposal in detail, pointed out and acclaimed the advantages to individual employees of the various features of the proposal, and sought to demonstrate [20] how the proposal so met the various needs of the employees as to obviate any reason for a "long pay-losing strike in order to get the things you want." In addition, the script expressed the Company's concern over the problem of job insecurity; spoke of the 2 years thorough research (including the early negotiations) in which GE had engaged to determine what makes for job [25] security; stated the conclusions that had been drawn therefrom (repeating in substance the major points contained in its presentations at the early negotiations); deprecated SUB as a solution;[39] and pointed out how its proposal had been designed to do the things its study showed could be done to help build job opportunities and better security for employees and was [30] therefore responsive to the

[551] [38] Elsewhere advertised as GE's 1960 "Jobs program."

[39] "Even those who advocate such programs as Supplemental Unemployment Benefits realized, and publicly admitted, that such programs really did little or nothing to make jobs more secure."

needs and desires of the employees. With respect to the proposed pay increases, the script stated that they were "good increases" considered in the light of recent settlements by other companies and the "other particularly expensive benefits" in the security provisions of the proposal. The total package, the script went on, while [35] worth enough to bring real gains to all employees, nevertheless was "not so costly as to put the Company in an impossible competitive position, thus endangering the jobs of *all* employees." In conclusion, the script urged employees to "consider the proposals carefully . . . discuss them with your families—decide whether this is a program you want —and then advise your [40] union representative of your decision."

In one respect, the Company's explanation of the offer was inaccurate and misleading because of the omission of a material fact. Describing the Income Extension Aid feature, it stated:

> [45] If within 60 days after being laid off, an employee decided to voluntarily terminate his employment, he could immediately collect the total amount available to him in a lump sum along with backpay, vacation and other allowances due him.

[50] The Company's offer is explicit that the termination pay would be given only where the Company was of the opinion that the employee would not be recalled within 6 months after the date of his layoff, and provided further that the

employee must abandon his recall rights. This was not an isolated instance of this omission. It is found frequent-

ly repeated in other employee communications where the features of Income Extension Aid program are described.[40]

[5] Beginning about August 31, 1960, ERMs or other responsible plant officials at most of GE's plant locations conducted meetings of employees, usually in small groups, at which they either played the tape recording or read the script of the prepared statement relating to GE's proposal, [10] utilizing the slides in conjunction therewith. The presentations were made on company time and property or at premises rented by the Company for the occasion.[41] At some of the plant meetings, the plant officials added to the prepared script comments of their own, either on their own initiative or in response to questions from the floor, explaining in some instances [15] why the Company could not grant certain union demands desired by the employees.[42]

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[40] Indeed, the 6-month layoff condition appears to have been mentioned in [30] only one of the numerous employee communications adverting to the IEA program. Short reference to it appears in the questions and answers distributed to ERMs and thereafter published at many but not all GE locations where the script above referred to was presented to employees.

[41] In some instances, local union officials were notified in advance of [35] the Company's intention to hold the presentation meetings. But even where they objected—as the record shows at least one did on the ground the Company was bypassing the Union and engaging in direct bargaining with employees—their objections were ignored.

[42] The General Counsel called employee witnesses from some 10 plants in [40] an effort to establish that in the course of such comments the officials also declared that the offer made to the Union was a *final* one and the *only* offer the Company would make, adding in some instances that no amount of negotiation could bring a better one. The testimony of the General Counsel's witnesses was met in many but not all instances by [45] contradictory testimony from witnesses called by the Respondent. Cross examination of the General Counsel's witnesses developed in substantially every instance either admissions rendering questionable the validity of the witness' testimony on direct, or, as was more often true, evidence of a likelihood that the witnesses in their recollection had [50] confused statements assertedly made at the offer presentation meeting with statements subsequently made either at other em-

(Footnote continued on following page)

Intermediate Report.

Following the offer presentation meetings, wide use was made in employee communications of the GE News Special Edition, questions and [20] answers, daily bulletins, letters to homes, and other materials as suggested in the communications program given ERMs at the August 29 meeting.

The Company's contacts with employees relating to the offer were not confined, however, to the plant meetings and written communications. [25] At numerous locations, plant management, through letters and other communications, invited and encouraged employees to discuss with their

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supervisors or other management representatives any questions they might have concerning the offer in general or its impact on them as individuals. At one plant (KAPL) the employees were provided with a telephone number—that of the plant ERM—which they were urged to call for answers to any [5] questions they might have about the offer. At GE's Pittsfield plant—one of its largest—the plant ERM conducted a series of roundtable meetings to which employees were invited for the purpose of asking questions and discussing the offer with the ERM. Documentary evi-

(Footnote continued from preceding page)

ployee meetings or in written employee communications. This was as much true in the case of the General Counsel's witnesses whose testimony was not met by specific denial as it was in the case of the others. The confusion of [55] the General Counsel's witnesses is perhaps readily understandable in the light of the barrage of communications to which the employees were subjected throughout the negotiation period. But this does not help the General Counsel. Without further belaboring the point, suffice it to say that I am not persuaded that the General Counsel has established [60] with sufficient reliability that company officials in their added comments at the "offer" meetings made the specific "finality" declarations referred to above.

dence reflects that the ERM did not confine himself to explanations of the offer, but also [10] presented economic and other justifications for positions taken by the Company.

Moreover, the record reflects that GE supervisors were expected both to impress upon employees the merits of the offer and to ascertain [15] employee reactions thereto. Thus, for example, a teletype from GE headquarters to plant ERMs, dated September 1, sets out "pointers that you and other supervisors might find handy while talking to employees about the soundness of our proposal." There is also in evidence a management newsletter, dated September 7, 1960, to all managers and supervisors at the [20] Holyoke plant, mentioning "some additional points that should be stressed by supervisors" in their contacts with employees.[43] Also in evidence is a memorandum dated September 6, to section and subsection managers at the Schenectady plant, stating, *inter alia:*

> [25] Individual departments have been charged with the job of getting maximum possible understanding of the offer among employees . . . We would appreciate receiving indications of reactions among your employees regarding the contract proposals. There may be misunderstandings. Perhaps there [30] may be benefits that are desired and are not included in the offer, or there may be strong reaction either positive or negative to the offer. Please jot down this information and forward it to the Communications Office.

[43] The supervisors were told to stress, *inter alia*, that the Company had not really eliminated cost-of-living escalation but had factored it into the second phase wage income; that this approach was beneficial to [60] employees because wages could not go down; that it was also in keeping with the recent trend of contract settlements and designed better to solve the problem of inflation.

[35] In addition, one of the Respondent's witnesses, a subsection manager in the Philadelphia plant, testified that a general meeting of supervision had been held at his plant on August 31 to familiarize supervision with the contents of the Company's offer so that they could communicate with employees concerning it. The record reflects similar supervisors' meetings [40] were held at other plants, at Lynn, for example.

The General Counsel called a number of witnesses to show that supervisors initiated discussions with employees both to sound out their reactions to the company offer and to endeavor to persuade them that the [45] offer was one that should be accepted. The testimony of these witnesses, to the extent credited, and as supplemented in some instances by responsive testimony of supervisors involved, shows the following: In *Philadelphia*, on the afternoon of the offer presentation meeting, a foreman questioned an employee as to his reactions to the offer. When the employee declared [50] his dissatisfaction with certain aspects of the offer, the foreman said he thought this would be the only offer. Several days later the same foreman asked him whether he had changed his mind about the proposal. Another foreman told another employee that the offer was a good one, [55] stressing that it would be foolish not to accept it, as a strike would cause

the plant to lose work and jeopardize future job security.[44] A subsection manager, several days after the "offer meeting," sounded out an employee's reaction to the offer, stating, after the employee had declared it inadequate,

[45] [44] The record does not clearly reflect the precise date of this conversation.

that the Company's offer was the product of careful research [5] and was fair and reasonable; that there was not room for more within the Company's ability to pay; and that nothing further could be gained by going out on strike.[45] The same section manager admitted that he as well as other supervisors under him spoke to other employees about the offer and sought to sound out employee reaction thereto. In *Newark,* an [10] employee steward was told by his general foreman on one occasion, and by the plant labor relations manager on another, that the Company's final offer was on the table and it was foolish for employees to go out on strike as a strike would not result in a better offer. These statements were probably made in the latter part of September. In *Pittsfield,* the manager of union [15] relations on three separate occasions in September approached a union steward, to whom he had never spoken before, to inquire about employee reactions to the proposal. When the employee indicated on the second and third occasions that he was still opposed to the offer, the manager stated that a strike could result in the loss of Government contracts and consequent loss of [20] employee jobs. The manager also stated on the third occasion that the company offer was final and there would be no change.[46] The manager conceded that he spoke to other employees to the same effect.

[45] The subsection manager admitted having a conversation with the employee about the offer, but denied making certain statements attributed to him. His denial, to the extent inconsistent with the finding made above, is not credited. [50] [46] The manager, who testified, did not deny these conversations. He testified, however, that the last conversation, in which the finality of the offer was mentioned, occurred in the latter part of September after a statement had come out from New York to that effect. His testimony in that respect is credited.

At various times during the negotiations, union representatives [25] complained, but to no avail, about the Company's "propaganda blitzkrieg" directed at employees, accusing GE of bypassing the Union and seeking to deal with employees directly. With specific reference to the Company's plant offer presentation meetings, the Union asked for equal time, and for permission to address the employees under the same conditions utilized by [30] the Company. The Company refused, declaring "Get them over to the union hall and you can talk to the employees."

K. *Negotiating meetings August 30 through September 8*

[35] There were seven negotiating meetings between August 30 and September 8. The Union during this period indicated a willingness to drop or scale down some of its demands, particularly in the areas of contract changes, pensions and insurance, but continued to press for its major [40] demands, including the union shop, a 3½ percent annual wage increase (as opposed to the slightly more than 2 percent offered by the Company), continuation of the cost-of-living escalator, SUB,[47] an added holiday

and an extra week's vacation for employees with more than 20 years' service. The Union also sought revision of the Company's Retraining and Reassignment proposal to

[55] [47] As to SUB, however, the Union modified its original demand to integrate it with the Company's Income Extension Aid proposal. It accepted the principle that a fund be made available for each employee at the rate of 1 week's wages for each year of service over 3, but proposed that the fund be used as a source of supplemental unemployment compensation [60] benefits, with any balance to an employee's credit remaining available for termination pay.

assure the protection of employee seniority rights.[48] Even with respect to the foregoing stated demands, however, the Union indicated [5] near the close of this series of sessions that its position was flexible.

The Company declared that it had a fixed position on cost-of-living escalation, SUB and the union shop, but that it viewed other union demands as within the "areas of collective bargaining." At the same time, the [10] Company made it quite clear, however, that it was willing at most to consider only such changes as were within the framework of its proposals. On various occasions, the Company indicated that it had not granted certain union demands because it had put such money as it had available into improvements which it had determined from its own research would best meet [15] the employees' needs and desires. The Company summarily rejected all union suggestions for revisions entailing added costs, frequently citing that consideration as the basis for its rejection.

The Union unsuccessfully sought to ascertain from the Company [20] the estimated cost of the company offer. It explained that it wanted the information so that it might

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[45] [48] The Union expressed concern that the R & R provision could be utilized by the Company as a means of impairing or circumventing employee seniority rights. The Company disclaimed any such intent and explained that its R & R proposal contemplated the negotiation of local supple- [50] ments which would define the manner of selecting employees for retraining and reassignment. Subsequently, the Company submitted a more detailed draft of its R & R plan, which stated, *inter alia*, that local management would take seniority into consideration as "an important factor" in selecting employees for retraining. Throughout, [55] however, the Company made it clear that any grievance arising out of the R & R program, unlike other seniority grievances, would not be subject to the contract's arbitration procedures. The Union considered this inadequate protection of employee seniority rights, and continued throughout the negotiations to oppose the R & R proposal as submitted, [60] principally on that basis.

be able to tell the Company how it wanted the available money allocated among different items. Moore stated that the Union had no right to decide what was best for the employees, and also said that he did not know the cost of the Company's proposal "because it hasn't [25] occurred yet." Asked more specifically whether the Company's offer would cost less than 9 cents an hour, Moore said the Company had not put a figure on its package. When the Union insisted that the Company must have estimated the cost of its proposal before submitting it, Moore denied having any such estimate. "GE works on a level of benefits basis, not [30] the cost per item," he declared. Actually, as the record shows, the various items in the Company's proposal had all been cost estimated by management representatives on a companywide basis prior to its release.

The Company during this period similarly rejected, ignored, or [35] brushed aside union requests for cost or other information relating to specific items in issue. Thus, for example, the Company resisted the Union's request for an added holiday and an extra week's vacation for employees with more than 20 years' service on the ground that it would add to the Company's cost. But when the Union asked for the number of employees [40] who would be affected by the vacation proposal so that it might itself compute the costs, Moore, shifting ground, stated in effect that such data was irrelevant because the Company "discussed the level of benefits." The Company took a similar position with respect to the Union's request for

cost information in the area of pensions and insurance.[49] The Company likewise refused cost information relevant to the Union's revised SUB demand.[50] When the Union on September 8 asked how many people would have benefited by Income Extension Aid on the basis of the Company's layoff [5] experience over the past 2 years, Moore responded, "Somewhere between zero and 100 percent." Later, however, when Carey persisted in his demand for this information, Moore told him to make the request in writing. As will later appear, the Union did thereafter submit such a written request, but the Company did not supply the Union with the information until after [10] the strike was over when it no longer could do any good.

In other respects also, the Company registered impatience with the Union's efforts to have it justify bargaining positions it had taken. Thus, on September 6, after Moore summarily rejected the Union's principal [15] justification for a 3½ percent annual productivity increase, declaring "there is no direct relationship of productivity to wages," Lasser for the Union asked Moore to state the factors that had influenced the Company's wage offer. Moore replied vaguely, "Many other factors, other settlements, competi-

[49] For example, during a discussion between the Union's benefit expert [40] (Swire) and the Company's benefit expert (Willis) relating to a union-requested improvement in maternity benefits, the following colloquy occurred:

Swire: We are asking for an improvement in maternity. We want the Company to pay [45] everything up to $500, then co-insurance after that.

Willis: Something like that is out of reach. Maternity is the most expensive item.

Swire: What does it cost, Sid?

[50] We talk level of benefits, not costs.

[50] As noted above, the Union suggested SUB as a substitute for Income Extension Aid, to be financed in the same way by a fund for each employee equal to 1 week's pay for each year's service. The Company objected to this proposal on the ground that it would come to 2 percent. But, when [55] Carey sought to ascertain for comparative purposes the cost of IEA, suggesting 1 percent as a likely figure, Willis refused to say, stating, "We haven't figured it out yet."

tion, etc." But when asked for further explication, particularly [20] with respect to a comparison of the Company's wage offer with those in other settlements, Moore evaded a direct reply. After lunch that day, Lasser asserted that the Company's offer was inferior to other settlements according to the Union's information. He asked Moore to disclose specific information with regard to the other settlements on which the Company relied. Moore [25] declined to do so, stating that the information was in the "public domain" and that Lasser should have prepared himself before coming to the meeting. On the following day, when Lasser again sought to ascertain the Company's reasoning behind its wage offer, accusing Moore of having evaded an answer the preceding day, Moore again declined to be specific, stating, "The wage [30] increase justifies itself." He further declared, "We bargain on what is the appropriate thing to do and the level of benefits."

Throughout the period in question, the Company adhered firmly to its offer as presented to the Union on August 30, except for its clarification [35] relating to retraining, noted above, and except also for the early signing bonus proposal to be referred to shortly below.[51] Other than as stated,

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[51] The Respondent contends in its brief that during this period, it changed its offer in some five respects. But this contention does not withstand [60] the test of scrutiny. One of the alleged "changes"—the inclusion of the reopener provision—formed part of the August 30 offer, and was, moreover, never requested by the Union. Three others— [50] inclusion of the cost-of-living adders to the base rate and the transfer of the R & R and IEA provisions from the Pension and Insurance Agreement to the National Agreement have been adverted to above. As has been seen, these did not involve any actual changes

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the Company at the bargaining sessions here under consideration, indicated a disposition toward flexibility only in one regard—the substitution of holiday and vacation improvements for part of the proffered wage increase. The facts as to this will be related in the succeeding subsection of this [5] report.

At the September 8 meeting, the Company announced that as a bonus for early acceptance it would make the 1960 wage increase effective on the Monday of the week the new agreement was signed instead of on [10] October 2, 1960, as originally proposed. At the same time the Company pointed out that it was making the same bonus available for other unions. No such change in the Company's offer had ever been requested by the Union. When the offer was made, Moore indicated that he did not expect the Union to accept it because "you are going to the convention." One of the tacks [15] thereafter taken in the Company's communication program was that the IUE leadership, by deliberately "stalling" negotiations because it assertedly wanted a strike, was depriving employees of the advantages of an early settlement.

[20] The parties agreed when the IUE-GE negotiations were originally scheduled that there were to be no meetings between September 8 and 20 because of the conflicting

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at all. [55] The fifth—the Company's assurance that seniority would be considered a factor in selecting employees for retraining—also adverted to above—was by the Company's own account not a change but simply a clarification of the Company's original position. Moreover, it failed to meet the Union's basic objection that without arbitrability of grievances employee [60] seniority rights could not be adequately safeguarded. Another change—the so-called Exclusion K modification—is placed by the Respondent in a later period although it more likely occurred during the early September meetings. That change will be considered in a subsequent subsection of this report.

IUE convention. Nevertheless, on September 8, the Company suggested the continuation of negotiating meetings during the convention period. In a "Dear Employee" letter teletyped that day for use [25] by ERMs, as well as in subsequent employee communications, the Company made capital of the "cold reception" it received to its suggestion for continued meetings. Neither that letter nor earlier communications mentioned, however, that on August 31 the Union had asked for meetings 5 days a week but that the Company had then declined to modify the original schedule. [30] Nor did the letter mention that on August 31, Callahan had suggested extra meetings beginning on September 19.

[35] L. *The Revision of GE's Offer to Include Holiday-Vacation Options*

After the Union made its offer, several members of the Union's negotiating committee from old line plants mentioned the importance which employees at their locations attached to the Union's demand for an added holiday and for a fourth week of vacation for 20-year service employees. [40] The Company indicated its interest in that demand from the outset and indicated a willingness to listen to any "within-the-framework" proposal the Union might have relating to vacations and holidays. The Union's negotiating committee, however, continued throughout this period to insist that the holiday and vacation improvements be *added* to the offer. In the [45] meantime, the Company through its two-way employee communication channels began to get "feed-backs" of employee reactions to its offer. These indicated that among employees in old line

plants the holiday-vacation demand was a matter of special concern and that there was considerable interest among such employees in working out an eighth holiday and fourth week of

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vacation in lieu of part of the wage increase. On September 7 and again on September 8, the Company invited a proposal from the Union to have holiday and vacation improvements substituted for part of the wage increase.[52] But the Union stated bluntly that it was unwilling to consider [5] any such substitution, explaining that it regarded the wage offer too low as it was. That was where the matter rested when negotiations suspended for the IUE convention on September 8.

Notwithstanding the Union's clearly expressed position on the [10] subject, Moore, on the morning of November 9 telephoned Callahan at his home to advise him that the Company was offering the Union the option of substituting an additional holiday and a fourth week of vacation for employees with 25 years' service in exchange for 1 percent of the 4 percent wage increase proposed to take effect on April 2, 1962. Moore then also [15] declared or at least clearly intimated that the option might also be taken by the Union on a local-by-local basis.[53] The Company at

[35] [52] On September 7, also, Moore, following up a remark by the Schenectady delegate, indicated the Company's amenability to having this worked out on a local option basis. But Callahan, the IUE-GE Conference Board [40] Chairman, made it clear that the Union bargained nationally and was not interested in local options.

[53] On this point there is a slight variance between Callahan's and Moore's testimony. Callahan testified that the local-by-local option was unequivocally offered at the time. Moore, on the other hand, testified [45] that he said the Company was "thinking about a local by local option," but that he did not actually make that offer until some time later.

about the same time also revised its offer to other unions to provide for the same option.[54] The informal submission of the vacation-holiday option proposals was publicized to employees almost at once, without waiting for negotiations [20] to resume. In some of its employee communications the Company stressed that the options were being offered as a direct consequence of employee reactions to its original offer. Thus the following appears from a script, in evidence, of a Schenectady GE television commercial on September 13:

[25] [Announcer]: Over the years, Schenectady General Electric has been trying to develop a relationship with its employees which simply stated means that the Company tries to be as responsive as it can to the real needs of its people. A good example took place a couple of weeks ago [30] when General Electric made a proposal to the unions with which it is trying to negotiate new contract settlements. The proposal was a good one. But, during the course of explaining it to the union employees at Schenectady General Electric, it became clear that many of these people would

rather see the proposal revised. As a result, the Company responded late last week with an alternate pro-

[54] The annual cost of the extra holiday was the equivalent of about a .4 percent wage increase. Approximately 10 percent of the employees had 25 years' service or more. The annual cost of the proposd [50] vacation improvment was thus the equivalent of a .2 percent increase under the national option. Under the local-by-local option it was expectably somewhat higher because of the element of adverse selection involved. In either case on a *3-year-basis*, the options offered were slightly more expensive to the Company than the 1 percent in wages [55] imposed as their price. This is so because the holiday and vacations would have gone into effect immediately whereas the compensating wage reduction would not have been applicable until the mid-point of the contract. However, on a long-term basis, assuming a carryover beyond the contract term, the options were worth less than the 1 percent in [60] wages required to be forfeited.

posal as the basis for a contract settlement. Let's discuss this proposal with Robert J. Buckley, manager of Union Relations [5] at General Electric . . . Bob, what was wrong with the initial proposal made by General Electric?

BUCKLEY: Bill, there's nothing "wrong" with the offer we made. It's just that many of our union employees told us they [10] would rather have some other things in the place of a wage increase.

M. *The Resolution at the IUE Convention for a September 25 Vote on the Recommendations of the Negotiating Committee*

[15] At the IUE convention held at Miami Beach between September 12 and 15, Carey and other speakers sharply attacked GE, and its asserted bargaining and other policies. The IUE-GE bargaining committee in a report [20] to the convention criticized the Company's proposal and charged the Company with pursuing a "take-it-or-leave-it" bargaining approach. The report in effect recommended rejection of the GE proposal in its then present form. The report further recommended that a Conference Board meeting be held in New York City on September 30, following further negotiations, to vote on [25] whether to accept an agreement or call a strike. The IUE negotiating committee adopted the following resolution, which was approved at a meeting of the GE delegates attending the IUE convention:

> All locals which have not yet voted
> must vote on the recommendations
> [30] of the Negotiating Committee
> on [Sunday] September 25.

Intermediate Report.

[35] N. *GE's Reaction to the Union's Call for a Vote*

1. Introduction

[40] The IUE constitution empowers its GE Conference Board alone to determine whether or not a strike should be called against the Company. Under the Union's official view, the local balloting was to be informative only, for the purpose of determining whether the employees favored acceptance or rejection of the Company's proposal. The Company, however, [45] chose to take a different view. In its Union Relations Bulletin[55] dated September 21, GE summed up its appraisal of the situation as of that time, as follows:

In Employees' Hands

[50] The question of whether there will be a strike is squarely in the hands of employees. Despite Carey's dark predictions in Miami last week that local votes are purely "informative" in nature, and that the "strike-no strike" decision will be made by the Conference Board, [55] we firmly believe that the Conference Board will not be so foolish as to call a strike in the event of a wide-spread "no strike" vote by the members back home.

And so the real scene of negotiations shifts from [60] *New York to all the IUE-represented plants. The eventual outcome will be decided there—quite properly —and quite soon.* (Emphasis supplied.)

[55] The Union Relations Bulletin was prepared under the supervision of Moore "for information of all [GE] management."

During the 2 weeks following the announcement of the local votes, the Company directed its energies in an all-out effort to assure that the "outcome" at the plant locations would be decided its way. Below is a general description of the various steps it took.

[5] 2. GE attempts to induce Local officials and employees to alter the time and place of voting and the question to be voted on

[10] Almost immediately after the Union announced that local votes would be taken, GE loosed an attack on the Union's election plans. In communications directed to employees and plant communities, GE characterized the local votes as simply a further step in Carey's plan to "steamroller" employees into a strike against GE in order to further his personal, [15] political ambitions. The communications charged that the local votes had been scheduled to be "held away from the plant and on a Sunday so that only local supporters will cast ballots," and that the ballots would be worded so that employees who did "make an extra effort to show up would not know what they were voting for."

[20] On or about September 15, the ERMs or other responsible plant officials at most of GE's locations, acting at the suggestion of New York headquarters, sent open letters to the top IUE local officials at their respective locations. It was stipulated that the content of all letters [25] were to the same general effect as in a sample letter in evidence. The letters stated that just as GE employees "have a right to strike if that is what they really believe is their only alternative," so, too, the Company has the

"right to take a strike." However—the letters went on—such a strike, should it occur, was likely to be a long one that would be "just [30] plain disastrous" for the employees as well as for the community, and one, therefore, that should not be resorted to unless "it unquestionably has the support of the vast majority of employees." Consequently, and "in order to encourage a maximum turnout for this important decision," GE was proposing to the Local officials: (a) that the strike vote announced for Sunday [35] September 25, be conducted instead on the preceding Friday or following Monday on company time and premises; (b) as an alternative, should the Local object to a vote on company premises, that the vote be held at a nearby outside site to be obtained by the Company, with the Company paying for all necessary transportation as well as for employee time lost in voting; [40] (c) that the vote be taken by secret ballot under the supervision of impartial outsiders and on the basis of eligibility lists prepared from current company records; and (d)—a point particularly stressed—that the ballot question be framed in clear-cut language so that employees would clearly understand that it was an actual strike vote and not something else, [45] as, for example, a vote "to support the Union and strike if necessary."

The Company did not prior to sending the aforesaid letters—nor thereafter—consult with or attempt to obtain the approval of the Conference Board's negotiating committee with respect to the proposals made.

[50] With possibly a few exceptions, the IUE locals declined to except the proposal made by the Company with regard to the local voting. Later that same week—as

appears from the same stipulation—the Company addressed letters directly to the IUE—represented employees informing them of the [55] proposal it had made to their local. The letters pointed out that the Local's "first reaction" was "not favorable" but that the Company still hoped that the Local "which should reflect the views of its members," would reconsider the matter if, as was suggested, the employees urged their local officers to do so. The letters stressed that it would be more [60] convenient for the employees to vote during regular working hours with no loss of pay, rather than on a Sunday, and also pointed out that one IUE local had already accepted the Company's proposal. In the same letters,

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the Company suggested that the question of a strike had suddenly been "thrust upon" employees by the Union for reasons unrelated to the employees' interests. The letters stated (inaccurately) that the Company had offered three alternative proposals "in response to suggestions from [5] the negotiating committee," but that "just as it appeared that progress was being made," the Union's negotiating committee had departed for a full week's convention in Miami. There—the letters went on, again inaccurrately— "700 delegates . . . had directed that locals conduct a vote on Sunday, September 25," and "85% of [such] delegates . . . were from [10] companies . . . [which] are direct competitors of some General Electric component." The offer made by the Company, the letters emphasized, was "within the limitations imposed by the bitter competitive situation which the Company faces." The "major impact" of a strike, it pointed out, would "be on

individual employees and their families." The Company would suffer [15] too, "but lost customers can only mean lost jobs as well."

Through additional communications to employees, as well as through press releases and newspaper ads, the Company further sought to build up a ground swell of employee and community sentiment to force Local [20] acceptance of the Company's proposal as to the time, place, and conditions of the local votes.

On September 20, when formal negotiations resumed, the Union complained of the Company's "election interference" and announced, "The Union [25] rejects [The Company's proposals for local voting] naturally." The Company nevertheless thereafter continued its efforts along the lines aforementioned.

3. GE announces to employees that its offer is now final and reiterates its policy [30] not to make concessions because of a strike or threat of strike

As noted above, the Company had criticized the Union's negotiating committee for suspending negotiations for the IUE convention, implying to [35] employees that but for such suspension progress might have been made in the negotiations. However, following the announcement of the local votes, the Company, without waiting for negotiations to resume, took steps to impress upon employees that its full offer was now on the table and that the employees could expect to gain nothing more by reason of a strike or threat [40]of strike.

Thus in a teletype, dated September 16, 1960, GE headquarters suggested to EMRs that they construct their communications to employees around several "major points." Two of them were:

[45] The Company has offered *everything* that appears to be right in view of the facts revealed by our own independent studies, our negotiations with union representatives and today's highly competitive business situation. (Emphasis as in [50] text.)

The Company will not "up" the offer because of strike threats or strike action.

[55] Appended to the teletype was the text of a suggested letter to be "mailed to employees' homes this afternoon or this evening." The letters stated in part:

> The Company's proposal is on the table, and no one should be fooled into thinking that a strike threat, or a strike [60] itself will add *more* to the proposal. It never has in the past, and it won't now.[56]

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On September 19, GE headquarters sent the ERMs a "Dear Employee" letter in Negotiation News format for release the following day when negotiations were to resume. The letter, subsequently used at plant locations, stated in part:

[5] At same locations it is reported that union officials are manufacturing a rumor that the Company can be persuaded to come up with some new proposal if employees will only show enough strike sentiment. It is

[56] This letter was mailed to employees' homes that day as suggested at least at some locations.

doubtful [10] that many employees will be misled into thinking that the Company would be indulging in last minute haggling. It is generally well understood by the union officials across the bargaining table that the Company is not holding anything back and that *the whole offer is now on* [15] *the table.* (Emphasis supplied.)

When negotiations resumed on September 20, the Company advised the Union that its full offer was now on the table, "Come October 2, Thanksgiving, Christmas, and Easter, it won't be any different," declared [20] Moore. At almost each negotiating meeting thereafter, the Company made statements of similar import. The finality of the position taken by the Company at the bargaining table was repeatedly reported to employees. One further example should suffice. The following is from a suggested employer letter in Negotiation News format, dated September 21, and thereafter [25] published at plant locations:

> We closed by saying again that everything that we are going to propose is on the bargaining table now, and there is simply nothing more to come . . . It has become apparent [30] that all the facts are in . . . and that we have gone as far as we can go without endangering the jobs of employees.

The repeated references to the finality of the offer, not only in written employee communications, but, as the record shows, also in oral [35] communications by supervisors, were coupled throughout the remaining period of negotiations with declarations pointing up the inevitable futility of a strike, regardless of its duration, in the light of the Company's policy not to give more simply to avert a

strike. Again one example should suffice. The general manager of the Bridgeport plant in a letter to employees [40] dated September 21, stated:

> Recently, a few questions have come to my attention as to why we modified our wage offer by offering an alternative extra holiday and fourth week of vacation. Actually, the [45] optional proposal simply represents a rearrangement of our original offer and not something that was added to the Company offer. I mention this so that there can be no misunderstanding as to whether a strike threat, or a strike itself, will add more to the Company proposal than is now [50] on the table. It never has in the past, and it won't now.

4. GE intensifies its attack upon the motives of IUE's leadership

[55] As earlier noted, the Company in its communications to employees had suggested right along, beginning even before the start of negotiations, that the IUE top leadership, particularly Carey, was determined to strike GE in 1960 for reasons unrelated to the interests of the employees and regardless of the fairness of the Company's proposal. The employee communica- [60] tions began to concentrate sharply on this theme about the time the negotiations recessed for the convention. While the convention was in progress, and even more so after the announcement of the local votes, the Company's attacks upon Carey mounted in volume and vigor.

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The employees were told, *inter alia*, that Carey never had any intent of reaching a peaceful settlement with the

Company; that he was not sincerely concerned with the employees' interests but only with his personal and political ambition; that Carey, in furtherance of his ambition and in [5] reckless disregard of employee interests, was determined to obtain a strike come what may; that to assure a strike he had come up with a "set of demands so fantastic —that no company could possibly agree to them without driving itself out of business and employees out of jobs"; that toward that end he had stalled negotiations, had deliberately avoided reaching [10] an agreement and had finally broken off negotiations completely to "attend a union convention in a plush Miami hotel"; that he had set in motion a "strike steamroller" at the IUE convention with the aid and support of delegates representing employees of competing companies whose employees would profit at the expense of GE employees' job security should a strike [15] occur; now he was trying to "sneak" through by a Sunday vote a quick "no contract—no work" vote which could only lead to a 156 day Westinghouse-type of strike doomed for failure; that he was willfully misleading employees into a false assumption that the Company was holding something back that it might yield in a strike; that with Carey at the bargaining [20] table there was no hope for any real attempt to reach agreement by the Union; that there was no more the Company could do to prevent a strike; and that only the employees themselves could prevent a long Carey-dictated strike.

[25] 5. GE makes its offer effective for nonrepresented employees

Reference has earlier been made to the Company's practice under its uniformity policy of putting into effect for

nonrepresented employees [30] the wage and benefit improvements contained in its basic offer to unions. Prior to 1960, however, the Company had always withheld such action until either the effective date of its new agreement with the IUE or the terminal date of the old IUE contract, that is, the date that would correspond to October 2 in the instant case. In 1960, the Company at some of its [35] locations, while presenting to nonrepresented employees the details of its proposal to the unions, had advised them that the program would be put into effect for them on October 2, with, as was stated at one plant, any modification that "may arise after further study."

[40] Contrary to past practice, the Company in 1960 decided to accelerate the effective date for nonrepresented employees. The decision to do so was made after consultation with Moore about September 18 or 19. On September 20, GE headquarters by letter authorized operating managers to make effective for nonrepresented employees, as of September 12 if [45] they desired, the 3 percent first-phase wage increase as provided for in the Company's offer to unions, and, in addition, to announce the changes in employee benefit plans which were to be effective October 2, 1960, including the improvements in the insurance plan and the new income extension aid plan.[57] It was suggested, however, that changes in other [50] benefits such as pensions, vacations and holidays "be announced at a later date, when a clear picture emerges with respect to the application of the various options." Under the Company's proposal, the pension changes were not to be applicable until

[60] [57] The record shows that at substantially all GE locations the 3 percent increase was actually made effective for nonrepresented employees as of September 12.

January 1, 1961. Nevertheless, on either September 22 or 23—only 2 days or so after suggesting that such announcement [55] be withheld—the Company proceeded to announce that the pension changes were being put into effect for nonrepresented employees. Moore at the negotiating meeting of September 22 advised Carey of the Company's intention to make the announcement that day. The following colloquy then occurred:

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Carey: Mr. Moore, don't you think that will inhibit you from making any modification to the arrangements that you proposed for us.

[5] Moore: It is a factor that we have to take into consideration.

It will be recalled that GE Vice President Day testified in substance that once GE has put into effect a pension plan for other bargaining units or for nonrepresented employees, the freedom of negotiators to [10] negotiate variances therein for other units is curbed.

Moore testified that his reasons for recommending that the wage and benefit improvements be put into effect at that time for nonrepresented employees were fourfold: (a) that the Company's offer to the unions had [15] been public knowledge for 3 weeks; (b) that it seemed evident at that time that an agreement with the IUE was not imminent;[58] (c) that the Company was getting "a considerable amount of pressure from [its] operating people as to when they could be in a position to tell the nonrepre-

[50] [58] But Moore could not recall this reason on cross examination.

sented employees what improvement in wages, benefits were in store for them and [20] when they would be effective''; and (d) that the Company had begun to receive acceptances of its proposal from other unions. (Actually, as the record shows, the Company up to then had received acceptances from only 9 local unions representing a total of 845 employees out of about 120,000 union-represented employees.)

[25] The reasons given by Moore are not persuasive. Those listed above as (a) and (b) are complete *non sequiturs* to the critical question of why the Company thought it desirable to depart from past practice to *accelerate* effectiveness for nonrepresented employees. The reason cited [30] as (c), I find wholly unconvincing. Not only was it not buttressed by detail, but no reason appears why ''pressure'' could not just as easily have been relieved by telling the operating managers that the effective date would be October 1, in accordance with past practice, as, indeed, the record shows some of the operating managers had already told nonrepresented [35] employees. It does not explain the need for acceleration.[59] As for reason (d), the connection between this and the decision to deviate from established custom is not apparent, and was not clarified by Moore while testifying. Even if it be assumed that the Company considered it unfair to deprive nonrepresented employees of wage increments already available [40] to

[59] When this was pointed out to Moore, on cross examination, Moore testified that the earlier representations to employees were not enough [55] to relieve the "pressure" because the employees had been told they would have the benefits of the proposal "plus whatever may further come out of negotiations" and therefore did not have "the details of what would be effective,", a matter on which "they retained a high degree of interest." But this answer, if taken at face value, simply confirms [60] the General Counsel's thesis that the acceleration was a "freezing" action, precluding bargaining flexibility thereafter.

even a handful of organized employees, this would not explain why the Company considered it necessary to accelerate announcement of other benefits which, as in the case of the insurance benefits and Income Extension Aid, was not to be operative in any event until October 2, or, as in the case of pension changes, would have to wait the turn of the year for their [45] effectiveness.

The General Counsel and the Union suggest that the Company's true motivation for accelerating the announcement was to influence union employees to press for union acceptance of the Company's offer, by proving to them

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that the Company's position was already frozen, while at the same time demonstrating to them that the IUE's reluctance and failure to accept the company proposals was depriving them of immediate benefits. I am persuaded that the suggested inference is fairly warranted, taking into [5] account (a) the inadequacy of the Company's explanation; (b) the fact that the Company had just launched a vigorous campaign to get employee support in the upcoming votes on its offer; and (c) GE's representations as part of that campaign that the Company's full offer was on the table and that nothing could be gained by strike action. It is to be recalled, [10] moreover, that among the communication topics prepared by the Company months before for the 1960 negotiations was this: "Show how employees not represented by unions get their wages and benefits improvements without possible delay of waiting for union acceptance." This not only confirms the inference drawn above, but it shows that the acceleration action designed

[15] to influence directly employee attitudes was part of the Company's preconceived bargaining approach.

6. GE in its communications emphasizes danger to employee job security if its offer
[20] were enlarged or if a strike ensued

Note has already been made of the great mass of employee communications to which GE employees were subjected during the period following the IUE convention, as well as of the apparent purpose of the [25] communications to impair employee faith and confidence in the motives of the IUE top leadership, to induce a form of vote more to the Company's liking, and to impress upon employees the finality of the Company's position and the futility of strike action.

[30] During the same period, the Company in its communications continued to plug hard on the merits of the company offer. The communications did not always confine themselves to arguments that had been presented to the union negotiators. In some instances the Company elaborated its arguments far more fully to employees than it had at the bargaining table. [35] In some others, the Company presented arguments to employees that it had not presented at all to the union negotiators. The following situation at Lynn presents an extreme example. At Lynn, local management had sought to meet with representatives of the Local Union to discuss with them the local management's contemplated application at Lynn of the Company's proposed [40] retraining and reassignment program. The avowed object of the proposed meetings was to persuade the Local that the Company's proposed retraining program

as well as its employment security program, generally, offered particular advantages to Lynn employees and should be accepted. The Local, however, refused to meet separately with the Company for that purpose, taking [45] the position that local discussions at that time on retraining and employment security were improper and premature since the subjects were then under negotiation at the national level. Any proposals Lynn management cared to offer on those subjects, the Local stated, should be submitted to the national negotiators. The Local adhered to that position notwithstanding several [50] attempts by local management to obtain a meeting. Unsuccessful in its efforts to meet with Local officials, Lynn management proceeded to go directly to the employees. On September 19, the GE News at Lynn devoted three of its four pages to a detailed discussion of its local plans for retraining and makeup that it had wanted to discuss with the Local Union. [55] The discussion pointed up the advantages to employees of the Company's proposed program. The last page of the GE News contained an editorial, charging that "Top IUE officials, aided by a few local union officers" were "trying to railroad Lynn employees into participating in a strike." The editorial also sharply criticized the Local officers for "trying to shut [60] out the membership from learning how the retraining and makeup proposal could be worked out locally."

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The Company's employee communications during this period emphasized particularly that GE has gone as far as it could without endangering its own competitive position, and the security of employee jobs. For example, in

Schenectady, on September 20, GE Vice President Ginn [5] in a television address, printed the next day in the GE News, declared:

> Even without the threat of a strike, Schenectady departments are in a competitive fight for their lives. The way you vote . . . could go a long way toward [10] deciding whether your department has an even chance in this fight . . .

In Philadelphia, the Company on September 20 wrote each "Dear Fellow Employee" that any improvement in the Company's offer involving any additional cost [15] would "result in fewer jobs here." And in the same plant, on September 23, the general manager of the switchgear division stated in a message to employees that in view of increasing competition the decision the IUE members made "may well determine the future of our switchgear business."

[20] In discussing bargaining issues with employees, the Company did not always adhere to the positions expressed by its negotiators at the bargaining table. Thus, it will be recalled that when the IUE negotiators at the negotiation meetings sought to ascertain the cost of a fourth week of vacation for 20-year service people, the Company took the position that [25] costs were irrelevant, declaring that it negotiated solely on the basis of "level of benefits" and what was the appropriate thing to do. However, A. C. Stevens, Schenectady's ERM, in a talk to employees on September 21, stated in part:

[30] I know there's lot of talk going around the shop that the whole proposition looks pretty good and would be ok if the Company would just make the 4 weeks vaca-

tion available to people after 20 years service. But the difference represents a very sizeable increase in [35] cost . . . and we just don't dare incur the extra cost with the uncertain future that faces us at this time . . . there's a limit beyond which we don't dare go at this time without jeopardizing the future of our business and the very jobs we're trying to make more secure.

[40] In addition, the Company in its communications and local advertisements repeatedly warned the employees and the communities that a vote against the company offer—which it always referred to as a vote to strike—would jeopardize employee jobs and inflict serious harm upon the [45] communities. The warnings, with few exceptions, were couched in the language of general predictions as to asserted permanent losses of business that would flow from a strike. But the constant repetition of this theme and the manner of its presentation quite clearly reflect a purposeful design to play on employee fears and insecurities. Pittsfield serves as an [50] example. At that location, a GE advertisement in the Pittsfield *Berkshire Eagle* for September 21 included the following statement:

> If our employees vote to strike next week they could seriously jeopardize their job security—and jobs—for [55] months and or even years to come.

Another full-page advertisement in the same newspaper the following day stated that:

[60] If members of IUE vote Sunday to strike General Electric they will most certainly jeopardize the welfare of their families and their communities for years to come. A vote to strike would also jeopardize General Electric's jobs in Pittsfield in the future.

The next day a full-page display in the Pittsfield *GE News* stated:

> Make your vote count Sunday! If you vote *for* a strike . . . you will jeopardize your pay, your families' welfare and [5] your job.

In a press-radio release 1 day later, Pittsfield management stated:

> General Electric's Power Transformer Department will [10] *automatically be excluded* from bidding on 30 to 45 transformer transactions each month if a strike occurs at the local plant.

No reason was stated for the alleged automatic exclusion.[60]

[15] At some plants, the Company's warnings were more specific. Thus, at Waterford the manufacturing manager in a letter to employees, dated September 16, stated that the "strike" vote

[20] represents a fork in the road in determining our plant's future. It may well determine whether it will keep on growing . . . a strike would wipe out *indefinitely* all of the 75 new jobs created . . . since . . . 1958. *It would also bring about a direct reversal of promotions, and* [25] *result in a great many downgradings in reassignment.* (Emphasis added.)

On September 22—after the Waterford employees had voted to reject the offer—the Waterford general manager in a letter to employees termed those [30] who voted for a strike as voting to destroy the business, also repeating in that letter that "the offer will not be changed by a strike threat." At Waterford, also, the Company sought to bring

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[60] [60] Moreover, the Manager of Union Relations at Pittsfield admitted while testifying that during this period he engaged plant employees in conversations in which he told them that a strike could result in loss of Government contracts and consequent loss of employee jobs.

secondary pressures to bear on employees. On September 26, the local management sent a letter to "community neighbors." The letter enclosed a list of GE employees residing [35] in the "neighbor's" community. It suggested that the neighbor "contact personally any of our employees whom you know and have them impress the seriousness of the situation on their union leaders." The letter emphasized that "many hundreds of local jobs [are] at stake" with a potentially harmful effect on community business.

[40] At one of the Company's largest and oldest plants —Lynn—foremen warned employees that there was a serious possibility that a strike might cause GE top management to close down the Lynn plant entirely. In a Management News letter, dated September 22, the supervisors were given a [45] "message" headed "Lynn Hangs in the Balance," which they were told "you should get across to IUE members to-day." The message stated in part:

> But there is more at stake than just a long strike . . . As you know the Company has more and more in recent years [50] looked to the south and the west for its growth and expansion . . . General Electric has not forsaken its old-line plants . . . Despite the greater costs, it has maintained respectable employment levels and has continued to invest money in them.
>
> [55] But it just does not make sense to continue to invest money in the older plants when they may, upon the whims of union officials, be shut down at any moment . . . There is no

> reason why the Company should continue to keep all its eggs in several large baskets—unless employees and

management can demonstrate that they are willing to compete with newer locations . . . But we can very frankly [5] see all our efforts going down the drain if we are struck by the very employees toward whom the 1960 contract is specifically aimed.

So, as Lynn IUE members come up to the day of decision [10] on their strike vote, they are, in a very real sense, voting upon their futures . . . a pro strike vote . . . will have disastrous consequences that reach far beyond a strike itself.

Credited testimony in the record reflects that about this time foremen at [15] Lynn were speaking to employees and telling them that the Company's offer was a good one that should be accepted; that it would be "crazy" for employees to strike; that a strike would cause the Company to move out of Lynn.[61]

[20] Also at Lynn on September 22, the Company in a plant newspaper told employees in its Aircraft Accessory Turbine Department that before making up their minds on the company offer and the union strike vote, employees should consider, *inter alia*, that

[25] Right now these old line plants are under a severe competitive handicap. In fact, the most severe handicap possible. We find it hard to compete with newer plants in our own company. We find it harder to compete with newer plants of our competitors. And we find its hardest [30] to compete with foreign companies.

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[61] The General Counsel's witnesses giving such testimony referred to two [55] foremen specifically. One of them was no longer in the Respondent's employ at the time of the hearing. The other, who appeared as a witness, testified at first that he could not "recall" making the statements, but later conceded that he might have told the employees it would be "crazy" for them to strike. Although he did not concede [60] saying anything about plant removal, I think it entirely plausible that he did make such statements, as the General Counsel's witnesses testified, in view of the newsletter referred to above. I find accordingly.

> All of us can look around and see that much heavy industry is disappearing from New England . . . A strike may not put the old plants out of business—but is sure will make [35] the job of keeping them competitive a lot more difficult.

O. *Negotiating meetings between September 20 and October 1*

[40] Negotiating meetings resumed on September 20, following the recess for the IUE convention. Under the schedule as originally agreed upon, negotiations were to continue through September unless an agreement was earlier reached. Then formal negotiating meetings were held between September 20 and October 1, before the strike began. During that period, [45] there were also three so-called "sidebar" (informal) meetings, to which more specific reference will be made below. Beginning on September 21, Federal mediators, who were called in at the request of the Union, attended the formal meetings.

[50] As earlier noted, GE advised the Union on September 20 that its full offer was now on the table and would remain unchanged regardless of

how long negotiations continued. Throughout the period now under consideration, the Company constantly reiterated that position.[62]

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[45] [62] For example, at the September 21 meeting, Moore, reading from a prepared statement, declared, "Everything we are going to propose is before you now. There is simply nothing more to come." On September 22, when Carey asked whether there was any item in the Company's proposal that [50] Moore could change, Moore replied, "Mr. Carey, I don't know who you are used to dealing with, but you should know by now that the GE proposal is on the table. It is here, Mr. Carey. That is all there is." Statements by Moore to like effect are to be found interspersed throughout the negotiating minutes during this period.

The Company asserts that it nevertheless did in fact negotiate [5] "changes in or additions to" its original offer during the period under consideration, and cites four in its brief. Two, however, did no more than provide for the furnishing of certain information relating to the operations of the GE pension and insurance plans. The information was of a kind that GE in the past had voluntarily furnished the Union and [10] would have been legally required to furnish on request even in the absence of contractual covenant. The inclusion of the contractual requirement reflected simply an affirmation of an existing practice rather than a "change" through negotiation.

[15] The third asserted change involved a reduction in the amount which GE employees on leave as union representatives had to pay to maintain their interest in the GE pension plan. Under the IUE-GE Union Representatives Pension Agreement, a collateral agreement, GE's entire cost of maintaining the union representatives Pension Plan interests was billed to the Union. [20] The Union in its detailed pension proposals submitted on August 18, had requested, *inter alia,* that GE modify the agreement so as to compute the cost to the Union on the basis of the current actuarial assumptions rather than on the basis of the higher 1955 assumptions. The Company's offer had made no reference to the Union Representatives Pension Agreement. [25] Nor, so far as appears, was this matter considered in negotiations at any time prior to September 21, when it was collaterally raised during a discussion of another pension issue. At that time, Moore simply stated, "We reduced this [the cost of maintaining the union representatives interest] by one-third, you know." Later, Willis, the Company's benefits [30] expert, made clear that the

reduced amount was in line with the Company's "estimate" in rounded figures of what the *actual* cost would be during the new contract term. It would appear from all the evidence that this item did not involve a negotiated "change" or concession but simply an original declaration by the Company of its position.

[35] The fourth asserted change relates to a provision in the Insurance Plan known as Exclusion K, also sometimes referred to as the "spouse" provision. That provision barred recovery by employees of medical expenses incurred by dependents, or even themselves, where coverage for [40] such expenses was also provided for under another group program.[63] The Union in its original demands had requested the total elimination of Exclusion K. The "spouse" provision was discussed at the meetings of August 30 and September 1. The Union pointed out that under the

GE Insurance Plan an employee desiring to participate in any part of the insurance program—which provided for a number of other coverages besides medical care—had to participate in the entire program. The Union complained that it was unfair to require an employee to pay premiums for health [5] insurance where benefits thereunder were precluded by Exclusion K. Subsequently the Union modified its demand on "spouse coverage" to state specifically:

[55] [63] For example, if a GE female employee's husband working for another company was a participant at the other company in a group plan providing medical coverage for himself and his spouse, the GE employee would not claim benefits for medical expenses incurred either by her spouse or herself even though she paid for the GE insurance. However, if the [60] husband had an *individual* policy which provided coverage for his wife, the GE employee could recover for such medical expenses even though the husband also separately recovered under his own policy.

"Provisions should be made whereby employees have the option of purchasing the entire insurance and health program or the insurance program alone." The negotiating minutes in evidence show no further [10] mention of the "spouse" issue at any time between September 1 and September 26. It came up on September 26 in the following way: The Union that day had submitted for the consideration of the mediators a summary of the status of negotiations, listing, *inter alia,* the Union's revised "spouse" demand as an outstanding issue. While reviewing the [15] Union's summary, Willis for the Company stated that the inclusion of the "spouse" demand as an outstanding issue was in error. The Company, he explained, had earlier agreed to revise Exclusion K so as to make it inapplicable to situations where those insured under the *other* group plan paid the *entire* premium cost without any employer contribution. The [20] Company's revision of Exclusion K was of limited application and of negligible cost to the Company on a per employee basis. Though the revision did not meet its basic objection, the Union considered it a good improvement over the former Exclusion K and did not press its position on the "spouse issue" further. The respondent states in its brief that the [25] Exclusion K modification was effected on September 26. It is evident from what has been said above, however, that the Company must have changed its offer in that respect sometime earlier, but just when—whether before or after September 20—the record does not show.[64]

[45] [64] This view is confirmed by other evidence. In the Company's teletype report of the day's negotiations, the Company characterized the day's session as "fruitless," making no mention of the revision. Moreover, [50] at the meeting of September 29, Swire, who had not been present on the 26th, expressed sur-

(Footnote continued on following page)

[30] In any case, it is clear that the Company did not regard any of the aforesaid changes, when made, as a matter of any significance. They were never so much as mentioned in employee communications or in outside releases during the entire period of negotiations. In a teletype issued on October 2, GE, answering a *New York Times* article which had characterized [35] its attitude as being "take-it-or-leave-it," referred to the various changes which, so it stated, had been "made in direct response to declarations of the union bargaining committee." The only ones listed were (1) the wage reopener, (2) the holiday-vacation option on a national basis, and (3) the holiday-vacation option on a local-by-local basis.[65]

[40] During the period in question, the Union indicated its willingness further to reduce or modify some of its proposals and suggested compromise solutions as to others. Except for the two information "changes" noted above, all union-suggested revisions were summarily rejected.

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The Company's attitude at this stage of the negotiations is pointed up by its position on retraining and reassignment. Prior to the IUE convention, the Company

(Footnote continued from preceding page)
prise over the Exclusion K change, explaining that "the [Union] committee said we did not hear it across the table." Moore replied, "I thought this was covered across the table very thoroughly, in fact I went to the trouble of making it very clear to [55] Mr. Lawalin." If so, this must have been before the 26th, because Lawalin, a union committeeman, was not present on the 26th. Bearing in mind that Moore had announced on September 20 that there would be no further changes in the offer and that the Union had not pressed its "spouse" demand in the interim, there is reason to infer that the [60] Exclusion K revision occurred prior to September 20. Further support for such an inference is found in a statement by Moore at a subsequent meeting that GE's position "hasn't changed and will not change under threat of a strike."

[65] Actually, as has been seen, none of these were *requested* by the Union's bargaining committee.

had implied a willingness to drop the R & R provision from the national agreement if that were the Union's wish. The [5] Union had then stated that it did not want the provision dropped altogether, but wanted it "fixed" to meet its specific objections. This the Respondent had not done to the Union's satisfaction. After the resumption of negotiations, the Union several times requested that the R & R be kept out of the national agreement and be left entirely for local negotiations.[66] [10] But the Company now refused. It continued thereafter to maintain that position until the Union's strike capitulation. Then, when it could no longer be said that the Company had been forced to yield by reason of a strike or threat of strike, the Company acceded to the Union's request.

[15] The Company also declined as it had done before to provide the Union with cost or other information relevant to bargaining issues. On September 21, the Company rejected a union request for a pension plan modification because of the cost involved. But on the following day, when the Union requested the Company to specify the difference in cost, the [20] Company fell back on its familiar refrain, "We talk level of benefits, not costs." On September 27, when the Union asked the Company for the cost to it of the vacation-holiday option which the Company had offered at the price of a 1 percent wage reduction, the Company declined the information, stating that it did not make its offer on the basis of costs but on the [25] basis of reasonableness. The Company for the same reason declined to supply information as to the cost to it of a fourth week of

[60] [66] The Company had stated from the beginning that the R & R plan would not be utilized at any location unless a separate agreement with respect to its operations was worked out between the local management and the local union.

vacation extended to employees with 20 or more years' service. But only a few days before the ERM at Schenectady had told employees that the difference between a fourth week of vacation for employees with 25 years' service and one for employees [30] with 20 years' service was a "sizeable" one that the Company did not dare incur without jeopardizing its business and the security of employee jobs. On September 22, the Union by letter made a detailed written request for information relating to various matters involved in the negotiations, including some of the information that had previously been requested orally. [35] The request was not complied with until after the strike when the information was no longer of any value for negotiations, and even then only in part. This particular aspect of the case, including the Company's specific defenses, will be considered in greater detail in a separate section of this report, below.

[40] The Company's avoidance of justifications for positions taken was also reflected in other ways. Its stand on pensions provides a good illustration. The Company's pension proposals provided, *inter alia*, that the guaranteed minimum monthly pensions for each year of service were to be [45] increased to $2.40 (from $2.25), with a second stage increase to $2.50 on April 2, 1962, the midpoint of the proposed contract. The raise from $2.25 to $2.40, however, was not to become effective until January 1, 1961. The Union took the position from the outset that the effective dates of the new contract and of the initial increment should coincide so as not to [50] prejudice employees retiring between the contract date and January 1, 1961. And in the course of time that issue became the only obstacle to com-

plete agreement on the pension aspect of the contract. When the question first arose on September 1, the Company justified the January 1 date on the asserted ground that it had always been its practice to effect pension [55] changes on the first of the year. That justification was dropped, however, after the Union pointed out that in 1955 the effective date of the pension changes had coincided with the new contract date. When the subject came up

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again on September 21, the Company indicated that its justification was related to costs. But on the following day when the Union asked for the difference in costs between its proposed effective date and the one proposed by the Company, Moore refused to provide the information, [5] declaring, "We don't talk costs. We talk level of benefits." The Company declined to give any reason for fixing January 1 as the effective date, except to say it considered that the "appropriate date" and the burden was on the Union to convince the Company differently. When the Union asked why April 2, 1962, had been set as the effective date for the second phase, [10] Hilbert explained that it was the midpoint of the contract when the wage structure was to be changed. The Union then argued that by the same reasoning the initial increment should also coincide with the first phase wage increase. At that point Hilbert declared that the Company would "consider" doing so. During the afternoon session that same day, Carey [15] referred to Hilbert's earlier declaration and stated that with that issue out of the way the Union now believed it had reached full agreement with the Company on pensions. Moore, however, promptly repudiated Hilbert's expressed

willingness to "consider" a change in the effective date. The Company, he said, was not "taking anything under advisement for later [20] consideration," even on a tentative basis. "We have everything there is on the table," Moore added. The Company never did attempt to meet the Union's argument on that issue. At the September 27 meeting, when the Union again asked why the January 1 date was chosen, Hilbert stated, "You know it's the beginning of the year and it's the time that you make all the [25] resolutions for the New Year's and all that." Willis' accompanying response was scarcely more illuminating. "We think it is the appropriate date," was all he would say. Willis' laconic response was typical of many others the Company made in response to union arguments during this period.

[30] Perhaps the clearest revelation of the Company's bargaining frame of mind came at the meeting on September 28. At the time there were still three scheduled negotiating meetings left before the contract was to expire. The Union had theretofore several times reduced its demand for SUB in an effort to meet company objections. Its last previous proposal had been [35] rejected on the ground of costs. On September 28, Jandreau, the Schenectady delegate on the IUE negotiating committee, suggested as a possible solution "within the framework of the [Company's] costs" that the Company provide an additional option (presumably on a local-by-local basis). Under it 1 percent of the Company's proposed wage increase along with money available [40] under Income Extension Aid would be used to set up a fund upon which employees might draw to bring their unemployment compensation up to 50 percent of earnings. Jandreau made it clear that the

plan he proposed working out along those lines was not to add to the costs of the Company's proposals. Jandreau's suggestion was rejected by the Company. Later at [45] the meeting the following colloquy occurred:

> Jandreau: Mr. Moore, can I ask a question? Is it possible to change the company proposal one way or another? I ask this because you said to me and McManus [50] that this is it. It is all on the table. Is there any chance of changing your position one iota.
>
> Moore: There are two things, Mr. Jandreau. After all our month of bargaining *and after telling the employees* [55] *before they went to vote that this is it, we would look ridiculous to change it at this late date;* and secondly the answer is no. We aren't changing anything come a strike or high water. (Emphasis supplied.)

[60] Jandreaus: There is no sense in being here.

> Moore: Unless there is anything you want us to hear. If you have something now or persuasive, persuade us.

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> Callahan: You said you wouldn't change the proposal before, because of the employees.
>
> Moore: I said two things—one, that everything we [5] think we should do is in the proposal and we told the employees that, and we would look ridiculous if we changed it.

Later, Hilbert adverted specifically to Jandreau's aforementioned suggestion [10] for an additional option within the framework of the Company's costs, and declared:

I think we are in the final stage of negotiations, and I think it is frivolous for the union to make [15] proposals for changes at this time in the nature of Mr. Jandreau's. There would be three possible reasons why we would make a change at this time. First, if we had intentionally held something back and if we had done that and we revealed it now [20] *we would look foolish in the eyes of employees and others* . . . Secondly, if we made a serious error, an inadvertent error in the offer, and we have no such evidence of that, to warrant a change. Third, if we were so frightened of a strike that we would [25] change the offer just to avoid it and *then we would look even more foolish in the eyes of our people and of the country.* We don't think any of the three apply to this case. (Emphasis added.)

[30] Later:

Jandreau: . . . I am not trying to build up a ratchet situation. I am trying to work within the proposal.

[35] Hilbert: I am not sure you are saying that seriously, Leo.

Jandreau: I am speaking seriously and I am seeing whether you are following Boulwareism or not.

[40] Hilbert: What do you mean, Boulwareism?

Jandreau: Your take it or leave it. Moore said that that is all and there isn't any more, and you have just backed him up with your three types of reasons.

[45] Hilbert: What other reasons could there be?

Jandreau: Option 4 we put forth.

[50] Hilbert: That falls into reason 3.

The negotiating minutes and other evidence relating to this period do not bear out GE's representations to em-

ployees that Carey was determined to force a strike on GE, come what may. On the contrary, the record [55] reflects that Carey, while unwilling to capitulate to the Company's position, was anxious to open up some other avenue that might possibly lead to a peaceful solution on terms more to his liking. The Company showed little inclination to aid him.

[60] Carey had long complained—whether correctly or not is not in issue—that the Company's principal negotiator, Moore, lacked the requisite authority to deviate in any significant way from GE's offer. On a number of occasions, Carey unsuccessfully sought an opportunity to meet and confer

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with Vice President Parker, the GE officer having primary responsibility in the area of labor relations. On September 26, the mediators requested that such a meeting be arranged. In response, Moore stated that Parker would meet with Carey that evening "if Carey wanted to hear from Mr. Parker [5] that that's all there was and that it [the full offer] was on the table." At the sidebar meeting that evening—attended by Carey, Callahan and Fitzmaurice for the Union and by Parker, Ritter and Moore for the Company—Parker declined to do any more than state what Moore had said he would state. When Carey sought to discuss with him some of the issues in [10] dispute, Parker refused to be drawn into any such discussion, declaring that that was not a negotiating session. He told Carey that "as far as the Company is concerned, we have no more to offer, but if you want to talk about it at the bargaining table you go ahead and do it." Parker's assertion that the Com-

pany's offer would not be changed was thereafter [15] broadly publicized by the Company to its employees as positive confirmation of the Company's earlier declarations that employees could hope to gain nothing further through strike action.

Also at the sidebar meeting on September 26, Carey specifically [20] proposed that the six people then meeting should spend some time in an effort to hammer out some agreement in principle. Carey explained that it was his experience that a meeting of that nature was more conducive to the settlement of issues than larger meetings of the kind engaged in at formal negotiating meetings. The Company rejected Carey's request. Moore [25] at the hearing testified that his stated and actual objection to Carey's proposal for a reduced bargaining committee was his "sincere belief" that

> collective bargaining takes place across the bargaining table with the full committee and is not to take place [30] at any sidebar meetings or with any side deals not *in full view of the public* and the negotiating committee on the union side. (Emphasis added.)

On September 26, Carey in a letter to Ralph J. Cordiner, chairman [35] of the GE Board, proposed that the issues between the parties be submitted to either (1) a fact-finding board without authority to make binding recommendations or (2) an arbitration board with power to make a binding award, the choice to be left to the Company. The matter was referred to Moore who rejected the request, stating numerous reasons. The reasons are [40] not detailed here, because, contrary to the Union's contention, I do not consider the Company's rejection of third party interven-

tion as having evidentiary value on the issue of whether the Company bargained in good faith. The Union's request for such intervention is cited here only because of its bearing on GE's representations to employees concerning [45] Carey's strike motives.

Cordiner in his direct reply to Carey's letter of September 20, while reasserting that Moore had "full authority and responsibility" to represent the Company in its negotiations with the Union, told Carey that [50] Parker "as the senior officer in this important area of responsibility" would continue to be "available for meetings outside the negotiations." On the strength of that statement Carey arranged further sidebar meetings with Parker—also attended by others on each side—on September 29 and October 1. These meetings took substantially the same course as the [55] sidebar meeting of September 26.

During the last days of September, as the contract's expiration date neared, the Union sought an extension of the contract so that efforts to reach agreement might continue without a strike. Prior to September 29, [60] all of the Union's extension proposals were tied to other requests, either that the Company arrange to have an officer participate in negotiations or that the Company consent to fact finding or arbitration. The Union's extension proposals were "categorically" repected by the Company, primarily

on the ground that it was the Union and not the Company that had elected to terminate the contract on its expiration date. The Company made it quite clear that it was op-

posed, even in the absence of conditions, to any contract extension, or, for that matter, to any "delay in settling [5] the strike question—one way or another."

At the September 29 formal negotiating meeting, the mediators proposed that the parties continue to bargain without interruption of production and preserve the "*status quo*" (which they explained contemplated [10] the extension of the contract) until a new agreement was reached. In a private session with the mediators the previous day, Carey had indicated his willingness to agree to an unconditional contract extension. Both he and the mediators believed, however, that the chances of a cordial reception by GE would be greater if the proposal came from the mediators [15] rather than from the Union, and if the Union were to withhold formal acceptance until the Company replied. It had been arranged to proceed accordingly. When the mediators on September 29 made the proposal, Carey immediately responded that the union committee would withhold its reply until after it received the Company's answer and had reported to the [20] Conference Board. The Company, however, after ascertaining that the proposal contemplated an extension of the contract, promptly declared that its answer had already been given. The Company's reference was to its "categorical" refusal at the bargaining session the day before to agree to any extension beyond the contract's expiration date. Though not so [25] told at the meeting, it appears that the Company was aware that the mediators' proposal had the prior blessing of the Union.[67]

[55] [67] This is apparent from a company teletype, dated October 1, wherein it was stated that "he [Carey] got the mediators to make a proposal for him to extend the contract."

Later in the session the Company formally declared its position as follows:

[30] . . . we must point out that on October 1 the IUE agreement will terminate as a result of notice given by the IUE to us several weeks ago. There will be no extension of the contract beyond that termination date . . . for 15 days, 10 days, for [35] five days or even one day. *With that termination, the cost of living excalator arrangement will terminate. In addition such matters as union dues checkoff, pay to union officials for grievance time and superseniority for union officials and related matters will have to be considered and reconsidered by* [40] *us as they will no longer be binding* . . . The current pay, seniority, pension and insurance and other benefits will be continued in effect for all employees who report for work . . . (Emphasis added.)

[45] At the opening of the September 30 session, Carey announced that the IUE-GE Conference Board had adopted the recommendations of its negotiating committee to reject GE's offer and to shut down GE plants on October 2 because of GE's refusal to continue the contract.

[50] On October 2, the strike began as scheduled, with only the Schenectady local remaining at work.[68]

[68] Schenectady, however, joined the strike on October 6.

P. *Alleged local bargaining; other events during the strike*

1. Offer at Schenectady and Pittsfield of more favorable truce terms than those theretofore offered the Union

[5] In rejecting the truce proposal made on September 29, the Company stated it would commit itself only to maintain in effect the then current [10] pay and fringe benefits for employees reporting to work after October 1. The Company made clear that after October 1, it would regard its *contractual obligations* as having come to an end. Among those which it specified it would thereafter regard as no longer binding were "such matters as union dues checkoff, pay for union officials for grievance time and superseniority [15] for union officials." As to such union-related terms and conditions, the Company stated that it would have to "consider" later whether or not and under what circumstances the Company might retain them in effect.

The Company did not thereafter in the national negotiations [20] say anything further about what it proposed to do with regard to the union-related conditions until October 7 at the earliest, although there were several negotiating meetings in the interim.

In the meantime, on September 29—the very day the Company in [25] national negotiations expressed uncertainty on this point—a company consultant, acting pursuant to a policy decision arrived at by Moore and his staff in New York, authorized Employee Relations Manager Stevens of Schenectady to maintain in effect at that location, provided that the employees there did not strike,

all preexisting terms and conditions of the [30] expiring contract (except for the cost-of-living escalator) including the union-related and grievance-related conditions. On September 30, the Company announced to its Schenectady employees that the plant would be open on Monday, that all preexisting practices, policies, pay rates and benefits would continue in effect, and that the Company would "continue to recognize [35] all present local union relationships, including superseniority for shop stewards, the grievance procedure, etc." The Schenectady IUE local had theretofore voted not to strike. No similar announcement was made at that time at any other IUE-represented plant, except at Knolls Atomic Power Laboratory, a satellite of the Schenectady plant, also under the jurisdiction [40] of ERM Stevens.[69]

On October 3, Business Agent Leo Jandreau of the Schenectady local stated in a message to the Local membership that because of the Company's refusal to continue the contract beyond October 1, 1960, "the contract [45] provisions for grievance machinery, protection covering working conditions, seniority, prices, wages and many other conditions [including recognition of elected union representatives] can no longer be enforced." Jandreau recommended a "no contract—no work" course.

[50] In evident response to Jandreau's message, ERM Stevens issued a statement to members of the Schenectady local that same day, in which he declared the Company's intent to "commit" itself to retain in effect all "protections of the contract" so long as the local was not on strike. Stevens that same day also made a similar commitment to

[69] The KAPL employees, who are organized into a separate IUE local, had [60] theretofore voted to reject the Company's offer.

Jandreau—confirmed [55] in a letter, dated October 4, reading as follows:

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Dear Mr. Jandreau:

This is in response to your suggestion that I put on paper our agreement to continue protections of the Company- [5] Union contract which was terminated by the International as of October 1, 1960. I am pleased to do so herewith:

We agree to extend to you protection of the recent contract, including grievance machinery, [10] protection covering working conditions, seniority, prices, wage rates, and any other condition of employment recited in the contract. Current cost-of-living adders will remain in effect. We will continue union representation [15] recognition as presently constituted and all the above will remain in effect so long as we are not on strike.

Very truly yours,

[20] A. C. Stevens

In publicity to employees at Schenectady, the Company declared that "the same offer had been made by General Electric negotiators in New York to [25] IUE President James B. Carey before Carey called a strike against the Company [and that] Carey refused the offer." That was not true.

The same truce terms were also offered on October 4 to the IUE Pittsfield local. That local had also theretofore voted to accept the [30] company offer, but, unlike Schenectady, had joined the strike at its inception. On October

4, ERM Arthur Mellikan of Pittsfield offered the local union at that plant the same truce conditions that were given Jandreau in Schenectady.[70] Mellikan's offer was broadly publicized to employees at Pittsfield, through press releases, plant communications, and individual [35] letters to employees.

2. Direct dealings with other IUE locals regarding truce terms

[40] On October 4, the Union filed an unfair labor practice charge against the Company based in part on the offer to Local 301 at Schenectady for a separate truce agreement. Some time after the charge was filed, the Company informed the IUE national negotiators that the conditions offered the Schenectady Local were generally available to all IUE locals not on [45] strike. There is a dispute as to the date this was done. The Company claims such a proposal was orally made on October 7 by Counsel Hilbert for the Company to Counsel Sigal for the Union. The Union, on the other hand, claims that the proposal was not made until October 10, when it was made in writing. Because it is undisputed in any event that the proposal was [50] made on October 10 and nothing of consequence to the issues herein occurred in the interim, I find it unnecessary to resolve the sharp conflict on that point.

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[55] [70] The Company's assertion in its brief that the offer at Pittsfield was solicited by the Local is not supported by probative evidence and is found to be contrary to fact. Moore testified that before the offer was made he had been informed that an unidentified Local official had inquired of Mellikan whether the Local there could have the Schenectady [60] terms if it returned to work. Moore's testimony, however, was based on hearsay twice removed, and is in conflict with the direct testimony of Arthur LaBlue, the Pittsfield Local's business agent to whom Mellikan made the offer. Mellikan did not testify. LaBlue is credited.

The Company's written proposal on October 10 was "to reestablish in any IUE unit which is not on strike" all terms and conditions of the expired contract (except the escalator clause) including such matters as checkoff, grievance procedures, and privileges of union officials. Elsewhere [5] the Company made clear that the union-related conditions would be reestablished only in units where local officials publicly announced a return to work and employees returned accordingly.

The Company's October 10 truce proposal was not accepted by the [10] IUE national negotiators. Notwithstanding its rejection at the national level, the Company sought at some plants to obtain its acceptance at local levels through direct contacts with local officials as well as by appeals to employees.

[15] Thus, at Lynn, ERM Burns wrote Local Business Agent McManus on October 10, requesting a meeting to discuss, among other things, a strike truce. He specifically proposed working out a separate memorandum of intent applicable at Lynn for an interim agreement reestablishing all former contract provisions (except the escalator clause) and for the return of [20] Lynn's employees to work while national negotiations continued. The refusal of the Lynn Local officials to discuss a separate truce proposal was thereafter criticized in communications to employees. The employees were urged to let their union officials know how they felt about a "truce" proposal. The Company's communications to employees emphasized that a [25] continuation of the strike would cause loss of jobs through loss of contracts, diversion of work to other GE plants, and the like.

At *Waterford,* the Company wrote the president of the IUE Local, informing him of the proposal made at the national level and inviting [30] separate acceptance by the IUE Local. At about the same time, the company foremen telephoned the Waterford strikers individually to advise them of the proposal given their Local president and to urge its acceptance at a membership meeting, which they stated ought to be called for that purpose. At a meeting with the Local officials on October 14, called by the Company, [35] the Company stressed that a substantial number of Waterford jobs would be permanently lost if the Waterford plant did not soon return to production, and again urged Local acceptance of the truce proposal. The meeting was followed by further telephone calls made by foremen to the employees summarizing the information given Local officials as to the number of jobs [40] being endangered by the continuation of the strike. The employees were again urged to convince their Local officers to abandon the strike "under the protection of the Company's truce offer."

At *Louisville* and at *Bridgeville,* the Company in letters to the [45] IUE Local presidents, dated respectively October 14 and October 20, similarly invited separate Local acceptance of the truce proposal made in national negotiations and there rejected.

At *Syracuse,* on October 17, 1960, Loren Vinal, president of the [50] Syracuse Local, telephoned James Delmonico, the Union Relations Manager of the GE Syracuse plant, regarding the vacation pay of a striking employee. Following discussion on that point, Delmonico suggested that Vinal might want to bring the employees at Syracuse back to work as Jandreau had done in Schenectady.[71] Mention-

[71] The Schenectady Local had returned to work that morning.

ing how popular Jandreau had made himself at [55] Schenectady, Delmonico told Vinal that he would be as highly regarded in Syracuse if he followed Jandreau's example. Vinal was then under suspension for alleged strike misconduct. When he pointed this out to Delmonico, the latter assured him that his suspension would be taken care of if he brought the employees back. When Vinal mentioned that 16 other [60] Syracuse employees were also under suspension, Delmonico replied that their suspension, too, could be discussed if Vinal was serious. Delmonico told

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Vinal that if the employees returned to work, they would receive the benefits of the old contract, except for the escalator clause. Vinal declined to bring the employees back.[72] [5] The General Counsel in his brief refers to other instances—not detailed here—of asserted attempts by the Company to undercut national bargaining by direct dealings with IUE locals during this and earlier periods. They are found not to support the General Counsel's position on that point.[73]

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[40] [72] The above findings are based on Vinal's credited testimony, corroborated in substantial part by employee Robert Robinson who heard Vinal's end of the conversation. Delmonico admitted having a conversation with [45] Vinal in which the Schenectady development was discussed and in which there was some talk about how Vinal would be regarded if he brought the employees back to work, but he specifically denied saying anything about lifting Vinal's suspension or that of others. Vinal had previously given substantially the same testimony without contradiction [50] at an arbitration hearing at which Delmonico was present. He impressed me as a credible witness.

[73] Thus, for example, the General Counsel refers to certain incidents at Worcester. But these establish at most a refusal to bargain with the Worcester Local on purely local issues, and do not bear on the [55] particular issues in this case. The General Counsel also refers to persistent efforts by the Lynn management to discuss with the Lynn Local the manner in which the proposed retraining and reassignment plan would be applied at Lynn. That plan, however, contemplated implementation at local levels, and it is quite clear that the local management [60] simply sought to clarify for the benefit of the Local certain proposed details which the national proposal contemplated were to be reserved for separate local negotiation and agreement.

[10] 3. Employee communications

To a substantial extent, the Company's communications to employees during the strike period were concerned with strike activities and [15] developments, advice to employees as to their legal rights to work without molestation during the strike, restatements of the Company's position on bargaining issues, justifications of its refusal to agree to outside intervention, and the like. At the same time, however, the Company continued in much the same vein as before to impress upon employees that GE's full and [20] final offer was on the table and to attack the motives of the IUE top leadership. The employees were frequently reminded that they ought not consider themselves bound by the "irresponsible" strike action which Carey had promoted in furtherance of his "personal" and "political" ambitions. Prior to October 10, the Company's communications constantly reiterated [25] that the Union's asserted "no contract—no work" obligation was a meaningless fiction; that GE employees and managers in the past had satisfactorily worked together for long periods of time without a contract; and that the absence of a contract was a matter more of concern to union officials than to employees. Beginning about that date, the communications stressed [30] how the Company's truce proposal would adequately safeguard employee contractual protections, and urged employees to contact their union officers and persuade them either to accept the Company's offer or the Company's interim truce proposal, or else to demonstrate by themselves returning to work that the "unnecessary" strike should be called off. The communications [35] also continually peppered the employees with reports of the increasing number of acceptances of the Company's offer by

other unions, of the strike's lack of success at other IUE locations, and of back-to-work movements at other plants. Stories of dissension in the ranks of the IUE bargaining committee were also reported and blown up.

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Throughout, the Company's communications, particularly at the old line plants, continued to point up—as they had done throughout the negotiations, and even before—the precarious competitive situation with which GE was confronted. Employees were told that in view of the [5] Company's competitive situation, no enlargement of its offer could be effected without generating unemployment in GE plants. The damaging effect of the strike on employee jobs was also constantly accentuated. Mention was made without specifics of orders lost or in danger of loss, and employees were warned that a continuation of the strike would affect [10] the availability of employee jobs for months or even years to come, if not indeed permanently. In some instances the warnings of potential job loss took a somewhat different slant.

Thus, at the Oakland plant of GE's wire and cable department, [15] the plant manager in a letter to striking employees, dated October 7, stated, *inter alia:*

> Within the Wire and Cable Department, Oakland is the only plant with a significant stoppage in effect. Lowell [20] is not on strike and two-thirds of the Bridgeport hourly people are back at work.
>
> Any cable normally made at Oakland can easily be made in Bridgeport or Lowell.

[25] On October 14, in a further letter to employees, the plant manager stated, *inter alia:*

> Our Bridgeport Plant, which is an IUE represented [30] location, is completely back to normal operation and is now supplying wire and cable which *you* could have made. . . . This is a time for decision for the Oakland plant. My boss, Mr. Obert, will visit the plant this month at which time our future plans will be determined. You can [35] best assure continued operation if you are at your jobs rather than on the picket line.

At Lynn, the senior company official at that plant addressed a letter to employees on October 14, in which he pointed out that Lynn [40] management had offered to agree to a truce that would bring employees back to work, but that "your local union has refused even to sit down with us," and expressed the "hope" that the employees "will let your union officers know how you feel about this." In the course of his letter, he commented:

> [45] At the moment, some of the Lynn departments have certain contractual commitments with the United States Government and must, in the interests of critical defense programs, decide whether to have the work done here or elsewhere.
>
> [50] I'm sure you realize that if the work is moved to other plants or companies, it will be very difficult for us to get it back.

In a press release issued 2 days later, the same Lynn official pointed out [55] that GE had facilities and open capacity at other plants to do work performed at Lynn; declared that if the Lynn Local continued on strike while other GE plants were operating, Lynn would have "trouble retaining some of the operations assigned here," with a conse-

quent drying up of Lynn jobs, and expressed the "hope" that the Lynn employees would vote [60] at a forthcoming meeting to follow the example of Schenectady and return to work.

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Q. *Negotiating meetings October 4 to October 19*

There were eight formal negotiating sessions and one further [15] sidebar meeting between October 2, when the strike began, and October 19, when the Company announced it considered an impasse had been reached and saw no purpose to further meetings.

The Company's bargaining position remained fixed throughout [10] this period. Moore summed up the Company's stand at the October 4 meeting. "Relating to the GE position," he declared, "it hasn't changed and it will not change under the threat of a strike." All efforts of the Union to induce the Company to modify its position in some respect proved futile. The Union's last-ditch proposal made on October 19 was for a settlement [15] on the basis of an 18-month contract with a 3½ percent wage increase (as opposed to the 3 percent increase offered by the Company for the first 18 months) and without any escalator clause. In rejecting the Union's proposal, the Company characterized it as "shake down bargaining" designed to force the Company to buy "peace."

[20] Various exploratory efforts by the mediators to find some compromise basis for settlement—such as for example their suggestion that the Company put a "price tag" on a 2-year contract—were rebuffed. The Company made it clear to the mediators that it saw no possibility of

[25] any movement in its offer even within the framework of its costs.

Both the General Counsel and the Union make much in their briefs of the Company's asserted refusal to supply the Union with contract language during this period. The relevant facts are set out below.

[30] At the meeting on October 1, Carey had requested that a subcommittee consisting of the Union's and Company's counsel meet to work on contract language as to items substantially agreed upon.[74] On October 6, in accordance with arrangements made, Sigal for the Union met with Hilbert and [35] Willis for the Company for the purpose of settling the definitive language of changes in the Pension and Insurance Agreement and related Insurance Plan and Pension Plan. Hilbert at that time handed Sigal drafts of the first two documents, but not of the Pension Plan. Hilbert told Sigal that the Company was still working on the pension plan changes and that it would be [40] ready in 2 or 3 days. The subcommittee did not complete its work on the available drafts on October 6. The next meeting was held on October 14. At that meeting, Sigal asked for the pension language, but it was not provided. As appears from Sigal's testimony, credited in this respect, Hilbert stated he would not produce the pension plan language until agreement [45] was reached on the documents which had been presented on October 6. No further meeting of the subcommittee was scheduled. The pension language was not delivered to the Union until

[55] [74] The Company's offer was drawn in the form of a detailed outline of its proposals rather than in the form of definitive contract language. The Company had earlier submitted to the Union a draft of proposed contract [60] language with respect to retraining and reassignment and income extension aid, but not as to other items.

October 27. There is nothing in the record to show that the delay in providing the pension plan language actually impeded the course of bargaining in any way; indeed Sigal conceded [50] while testifying that it did not.

At the meeting of October 18, the Union demanded that the Company put on the table the contract language in full in the form of the documents it was prepared to sign to settle all issues in dispute.[75] Moore refused

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to do so unless and until the Union stated what option it wanted.[76] Moore told Carey, however, that the Company had a document that would permit agreement.

[5] Later that day the Company sent 25 copies of a proposed short form memorandum of settlement to the Union's Conference Board meeting that was being held that afternoon. The document provided briefly that the Union was to accept the Company's proposal as theretofore made, that a binding agreement achieving settlement of all issues would be executed within [10] 30 days thereafter, and that in the interim the Union would determine which of the options it would accept.

At the opening of the October 19 negotiating meeting, Carey presented the union proposal, referred to above, for settlement on the [15] basis of an 18-month contract with a 3½ percent increase. When the mediators suggested a private meeting with the Company, Moore refused, charg-

[75] At the meeting of October 1 and again at the meeting of October 5, Moore had stated that the Company had the contract language available.

[60] [76] In its teletype that day, the Company disparaged the request, stating it had "no intention of confusing the issue by putting another document on the table."

ing the mediators with having rehearsed the proposal with the Union, a charge which the mediators denied. After the Company rejected the Union's offer, accusing the Union of "shake down" bargaining, the Union [20] left the meeting and separate sessions were held until early evening.

On reconvening, Moore stated that the parties were at a legal impasse and that the Company saw no useful purpose in any further meetings. The Union objected to the Company's assertion that there was a legal [25] impasse, declaring there could be no legal impasse in the absence of good faith bargaining.

The Union thereupon again noted that the Company had refused to put on the table a document including the complete agreement it was [30] prepared to sign. Hilbert for the Company replied, "We can't do it until we have agreement," adding, "Tell us the option and we will have it on the table." Moore referred the Union to the Company's proposed short form memorandum of settlement and insisted that that was sufficient, at least to end the strike. The Union responded that the short form was too vague [35] and general "to serve as something to be binding."

At that point Carey indicated for the first time the Union's readiness to capitulate, stating he would like to have an opportunity to discuss with the Company a strike settlement agreement. He handed Moore [40] a union proposal in the form of a bilateral agreement, providing for the immediate settlement of the strike, the simultaneous execution of the new National Agreement, and various conditions and protections that were to apply to the reinstatement of returning strikers.

[45] The Company responded that the Union had put "the cart before the horse" in presenting a strike settlement agreement before reaching full accord on the National Agreement, the Wage Agreement and the Pension and Insurance Agreement. The Company stated it would not look at the provisions of the strike settlement agreement until after agreement had been [50] reached on the other agreements.

The Union then again demanded that the Company put its full contract language on the table. The Company said it would do so, as soon as the Union advised the Company it was in agreement with the Company's [55] proposals and declared the option it wanted. The Union stated it was in "substantial" agreement but was unwilling to consent in advance to a contract it had not seen. The Company replied that the Union would have to express its *unqualified* agreement to the Company's proposals, eliminating the word "substantial," before it would produce the full definitive contract language.

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Nothing further was accomplished that day. Because of the Company's unwillingness to meet any further, the mediators, over the objection of the Union, adjourned the meeting subject to further call.

[5] R. *The strike settlement meetings on October 21 and 22*

The next meeting was held on October 21. Prior to the meeting, the company representatives met separately with

the mediators. Moore [10] reported to the mediators that the Company had completed its drafts of contract language. With respect to the Union's proposed strike settlement agreement, the Company indicated that it was prepared to go along voluntarily with some of the items of the Union's proposal in accordance with its established practice; that some of the others would be taken care of under [15] the new contract in any event; but that it saw no need for and did not intend to enter into a separate strike settlement agreement. Moore told the mediators:

> We are prepared to listen to what they have on a strike [20] agreement but our position is one of "thanks" but "no thanks." We haven't signed them in the past and we don't intend to.

At the opening of the joint meeting that day, the mediators inquired [25] if the Company had the contract language written up. Hilbert answered only "Yes." He did not, however, offer the contract draft to the Union. Nor did the Union again ask for it.

The Union then presented a new proposal which included two [30] separate agreements—(1) the strike settlement agreement it had earlier presented, slightly revised, and (2) a short form memorandum substantially in the form submitted by the Company on October 18, except for an item calling for elimination from the Company's proposal of the retraining provision.

[35] In presenting the Union's proposal, Carey expressly acknowledged his awareness that the Company was now

pect of getting local agreements on retraining would be [40] improved if limiting language were removed from the National Agreement.

As previously noted, the Company during the early days of September had indicated its willingness at least to consider dropping retraining from its offer if that were the wish of the Union. But after [45] the resumption of negotiations on September 20, the Company had insisted that that provision *must* be part of the package notwithstanding the Union's request for its removal. At the October meetings, the Union had continued to press for the deletion of the retraining provision. It had argued that as retraining was not to be put into effect at any location unless the [50] details were agreed upon in local negotiations, and as local supplements were subject to national approval in any event, the National Agreement should at most authorize local negotiations and should not impose limitations that might hamper the freedom of local unions and local managements to negotiate fully in the light of their particular local situations. The [55] Company, however, had refused to modify its position and had remained unyielding.

Now, with the Union's complete capitulation at hand, the Company relaxed its position. Moore told Carey that he would reserve comment on [60] Carey's request for reconsideration. At the final meeting the next day, the Company advised the Union that it was deleting the retraining and reassignment provisions from its proposal and leaving the subject entirely for local negotiations.

On October 21, after discussing briefly the Union's proposed memorandum of settlement,[77] the parties turned to a consideration of the strike settlement agreement. The Company adhered to its expressed opposition to the execution of a separate strike settlement agreement. [5] But it nevertheless discussed with the Union the various items in the Union's proposal, stated its views thereon and gave its reasons for such views. It indicated its agreement in principle as to some of the items, its objections as to others.

[10] At the opening of the meeting on October 22, the Union presented a single document labeled "Memorandum of Settlement," which combined in one instrument the provisions of its strike settlement agreement and of its memorandum of settlement as previously proposed. The Union explained that the revision in form was made to meet the Company's objection to a separate [15] strike settlement agreement.

The Company then announced that in the place of the strike settlement agreement theretofore proposed by the Union, it was prepared to give the Union a "letter of intent." It presented a draft letter stating [20] how the Company "intends to handle certain matters relating to the resumption of work." The letter provided more specifically, (1) that strikers would be recalled "as quickly as their services are needed"; (2) that strikers would not be discriminated against merely for strike activity; (3) that

[55] [77] Two points were specifically touched upon. One involved the question of retraining which, is already noted, was temporarily left open. The other concerned the effective date of the new contract. Moore suggested October 17, in accordance with the Company's offer to make [60] it effective on Monday of the week agreement was concluded. The Union wanted October 24, apparently on the theory that the earlier date could only benefit nonstrikers. Moore was agreeable to accepting the Union's date.

penalties imposed by GE *after* the end of the strike for [25] strike misconduct would be handled in the usual way under the new contract and be subject to arbitration; (4) that all pending criminal prosecutions and court and administrative processes based upon strike misconduct would "continue to follow their natural course"; (5) that the Company "has carried employees insurance coverage during the strike and will make the necessary [30] adjustments in order to reimburse itself"; (6) that "in accordance with long standing practice" strike absence would be included for relative seniority standing but not for computing employee benefits"; and (7) that grievances pending or based on action taken before the expiration date of the last contract would be processed in the regular way with time periods [35] tolled. To the foregoing, the letter of intent added that the Company had "offered to make the wage increase effective October 17" but "that the Union has, for reason of its own chosen the October 24th date." In short, the letter revealed that the Company was in agreement with many but not all the provisions the Union had asked to have included in a strike settlement. [40] The Union strongly objected both to the form of the document and to its failure to provide the full measure of protection embodied in the Union's proposed strike settlement agreement.

With respect to the substantive variances, the Company, in the [45] course of the discussions which followed, listened to the Union's arguments and stated its own reasons for the positions it had taken. On one point, it yielded to the Union's position, and added to its letter of intent a provision that discharges for strike misconduct effectuated during the period of the strike would "be subject to arbitration under voluntary [50] arbitration submissions which the

Company would be willing to sign." Throughout, however, the Company adhered to its position that it would not agree to a strike settlement agreement, labeled as such, but would agree only to have the strike settlement provisions embodied in a letter of intent.

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To the Union's objection that the letter was not a legally binding agreement but only a unilateral statement of intention, the Company responded the Union could, if it wished, initial the letter and thereby, it said, make it a letter agreement. It is quite clear, however, that [5] the Union was opposed to signing the letter both because of its unilateral form and because of some of its content. Sigal requested at one point that the Company drop from the letter the provision that pending criminal prosecutions and court and administrative processes would follow their usual course, pointing out in effect that this was simply surplusage [10] adding nothing to the Company's undertaking. The Company refused. "We'll leave the letter as it is," was all Moore would say.

At the hearing, the Respondent gave no persuasive explanation as to why it was opposed to a strike settlement agreement in bilateral form. [15] Hilbert testified—although he did not mention this at the negotiations—that the Company probably would not have opposed a bilateral agreement labeled "Return to Work Terms." The significance of the distinction escapes me.

[20] In the end, the Union yielded to the Company's terms. On the afternoon of October 22, it signed along with the Company the short form settlement agreement. The Company alone signed the letter of intent. Up to that time,

the Company had not yet presented to the Union, save in the partial respects referred to above, the actual contract language. It was [25] agreed that counsel for the parties would meet in the very near future to work out the contract language, but that the National Agreement would go into effect immediately without awaiting the final execution of the formal documents; also, that existing checkoff authorizations that had not been revoked would continue in effect. Apart from contract language, two matters [30] were specifically left open for later negotiation—one concerned Article XI, Section 3, the other the revision of the checkoff provision. These will be considered shortly below.

The Union terminated its strike as of Monday, October 24, 1960.

[35] S. *Postsettlement meetings*

Postsettlement meetings were held on October 27, 28, November 2 and 3, primarily for the purpose of reaching agreement on definitive contract [40] language. Several disputes arose during this period as to substantive terms of the agreement. It is claimed by the Union, more than by the General Counsel, that the Company's bad faith approach to bargaining spilled over into this period. The Respondent, oppositely, points to a number of asserted changes and modifications made by it in the postsettlement [45] negotiations as being the clearest evidence of its good faith throughout. Reserving evaluation for later, I turn to a consideration of the pertinent facts.

As noted above, two items were specifically left open at the time [50] of the strike settlement. Both involved at

least in part considerations of illegality arising out of then recent Board decisions.

One concerned Article XI, Section 3, of the 1955 agreement, reading in pertinent part as follows:

> [55] Employees—transferred to jobs outside the bargaining units may be returned to their former classification in the bargaining unit in accordance with their total length of continuous service. Employees in any plant who have been certified in a [60] bargaining unit not covered by this agreement shall have no rights under this agreement.

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The Union in its original contract proposals had sought revision of this entire clause to provide without more that employees transferred out of any bargaining unit would lose their seniority in that unit. The Company in its offer had made no reference to the Union's request. So far as [5] appears, there was no discussion at all about this particular provision until the meeting of October 11, when fleeting reference was made to it as a result of a then recent claim made by the Union in an injunction action at Lynn that Article XI, Section 3, was unlawful under the Board's *Menasco* rule (123 NLRB 627).[78] At that meeting, the Company had indicated [10] its willingness to delete the second sentence of the section to cure the asserted illegality under *Menasco*. The Union's objection to Article XI, Section 3, went further, however, and it was ultimately agreed that the subject would be reserved for later negotiation.

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[60] [78] Hilbert testified that the Company had known of the Menasco decision since 1959, but was waiting for the Union to raise the subject during negotiations.

The first sentence of the section had originally been written into the contract in 1950 at the [15] request of the Company and the qualifying second sentence had then been added at the request of the Union. At the postsettlement meetings, the Union sought to negotiate a new provision in line with its demand. The Company's representative stated that negotiations were not in order at that stage. However, the Company was willing, he added, to eliminate the [20] illegal sentence if the Union wished, but there would be no other change. During the discussion that followed, however, the Company fully stated its reasons for desiring retention of the first sentence, principally that its removal would discourge rank-and-file employees from accepting supervisory positions and thus hamper promotion from within. The Company did not yield [25] further, the Union finally did, and Article XI, Section 3, was retained except for the deletion of the second sentence. The Respondent in its brief cites this change as a concession. Actually the change was an improvement from its point of view.

[30] The other item left open involved a checkoff provision. The old contract had required an employee to give notice to the Union as well as the Company of revocation of his checkoff authorization. The legality of that requirement was then in question because of the Board's decision in *Boston Gas Co.*, 129 NLRB 369, October 12, 1960; later reconsidered and [35] reversed, 130 NLRB 1230, March 6, 1961. Here the Company simply accepted the Union's suggestion to eliminate a requirement which both parties then believed had to be surrendered to comply with law. The Company gave up nothing.

[40] During drafting, a dispute arose over the Company's proposed contract language relating to the eighth holiday

which was to be allowed if the Union chose the vacation-holiday option. Holiday dates in the past had always been negotiated. Nothing had been stated in the Company's option offer to the contrary. Moreover, at the October 1 meeting Moore had stated [45] that the Company proposed to have holidays negotiated locally. Nevertheless, the contract language submitted by the Company gave local management the exclusive right to determine the eighth holiday without negotiation. The Union protested. The Company justified its position principally on the ground that that was the only way to assure uniformity in plants where [50] there was more than one union. The Company held fast to its position through several meetings, but the parties finally agreed on Washington's Birthday as the eighth holiday, subject to the right of local management and the local union to substitute a different holiday by mutual consent.

[55] A dispute also arose with regard to a letter known as the 20.4 letter, which had been attached to the 1955-1960 agreement, and which stated in substance that the parties were in disagreement over a company policy relating to the arbitrability of discharges of employees who had

invoked the Fifth Amendment in certain circumstances. The Company requested reacknowledgment of the letter. The Union objected on the ground that there had been no reference to the matter in negotiations. The Company, on the other hand, took the position that when it made its offer, which [5] the Union accepted, it was its intention, as the Union should have understood, to retain everything in

the old agreement not specifically mentioned, and that the letter was part of that agreement. It flatly refused to reopen that item for negotiation at that stage, but in an effort to accommodate the Union did submit three different forms of [10] reacknowledgment of the 20.4 letter, one of which the Union ultimately accepted over protest. Sigal for the Union ultimately conceded while testifying that if the letter had not been reacknowledged, it would, by enlarging the area of arbitrability, have resulted in a change of the 1955 agreement in a respect not specifically reserved for further negotiation [15] after the settlement date.

Another issue arose with regard to the inclusion under the agreement of two locations, Bucyrus and Burlington, involved in decertification petitions that had been filed prior to October 22. The Company's [20] offer had provided that its terms would not be made applicable to employees in any bargaining unit "where there is pending an NLRB representation petition without a waiver of objections by any other interested union." The Company questioned the legality of listing Bucyrus and Burlington among the contract-covered units in view of the Board's *Midwest Piping* doctrine[25] (63 NLRB 1060). Sigal for the Union expressed his legal opinion that that doctrine did not apply to decertification cases. The Company, after considering this matter, agreed to include Bucyrus and Burlington.

In addition, the Company, during drafting, agreed to a few minor [30] changes not theretofore negotiated. One provided for emergency meetings at the third step (national) of the grievance procedure if the Union requested it. A second provided for written answers at the second step

of the grievance procedure. But this only restated a long time general practice, and was requested because one local management was lax. The third [35] change provided authority for local managements to *negotiate* with local unions for travel allowances in excess of 8 cents per mile. The Union had asked for 10 cents per mile nationally, and this had been rejected. Under the change, as construed by the Company, however, a local union, while free to demand a higher allowance, could not strike in support of its [40] demand if negotiations failed.[79]

The formal agreements were finally concluded and executed on November 10, 1960, after the Conference Board elected the holiday-vacation option on a local-by-local basis.

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T. *Alleged threat and discrimination at Augusta, Georgia*

At the Company's Augusta, Georgia, tube plant,[80] the plant [5] manager on October 5, 1960, sent a letter to three local union officials and one other employee, who at the time

[45]. [79] The Company's brief lists two other relatively inconsequential "changes" or "additions," as to the origin of which there is no specific record evidence, however. One, contained in the new contract, but not found [50] in the old one, provides that time paid for death-in-family absence shall be counted as time worked in computing vacation pay. The Company in its brief cites no evidence, nor have I been able to find any, to show that the Union ever asked for this or that it was ever a subject of discussion. The other listed item also, so far as appears, was never [55] requested by the Union. It was first included in a draft submitted by the Company about September 20 relating to its income extension aid proposal. The item relates to situations where on *plant closings* a laid-off or terminated employee who is then within 1 year of optional retirement—60—may instead of termination pay elect to take optional [60] retirement when he reaches optional retirement age. The asserted "change" or "addition" simply provides that such an employee would have his service (recall rights) protected until he reaches such age. But this seems to have little meaning because the only plant to which he can be recalled is closed.

[80] This is a small plant. At the times here relevant there were only 60 employees in the IUE unit at that plant.

were the only employees on strike, stating that if they did not return to work by the start of their regular shift, Monday, October 10, their employment with GE would be terminated and replacements would be hired. Thereafter, on October 13, 1960, the [10] plant manager sent the same four employees telegrams, followed by confirmatory letters, in which he asked them to disregard the aforesaid statement in the October 5 letter, informed them that their service with GE had not been terminated, but added that if they did not return to work by the following Tuesday, their positions would be filled by new employees. In the meantime [15] a Board agent had directed the attention of Hilbert, G. E's labor relations counsel, to the October 5 letter, and Hilbert in turn had communicated his views to the plant manager as to the propriety of the October 5 letter.

More employees at Augusta joined the strike after October 5, [20] including the 20 employees whose names are listed in the complaint and in Appendix A, hereto attached.

On October 24, 1960, the 20 listed employees made unconditional offers to return to work, but the Company failed and refused to reinstate [25] them. While on strike, all of them had been replaced by other employees.

On October 31, the Company offered employment to one of the listed employees—W. A. Chalker—conditioned upon his ability to pass a physical examination. On November 3, Chalker was reemployed and assigned [30] to his old job at his old rate of pay. On November 4, 1960, the Company offered employment to another—J. L. Cline—subject to the same condition. Cline did not pass the physical and was not reinstated. Thereafter, on November 5, the Company

offered employment to Lonnie M. Usry, who, after passing the physical, was reemployed on November 7, 1960, in his former [35] classification and at this former rate of pay, but on a different shift.

It is GE's general practice to require physical examinations of employees away from their jobs for more than 2 weeks. However, at the conclusion of the 1960 strike, the Company did not generally apply that [40] practice. So far as appears, it was applied only at the Augusta plant.

The complaint alleges that the Company independently violated Section 8(a)(1) by reason of the October 5 letter, and 8(a)(1) and (3) by its refusal to reinstate the Augusta strikers. It appears to be generally [45] conceded by all parties that the resolution of the discrimination issues in this case must turn on whether or not the strike is found to have been an unfair labor practice strike. That issue, as well as the independent 8(a)(1) issue, is deferred for later consideration.

[50] U. *The alleged independent violations of Section 8(a)(5) and (1)*

1. Preliminary statement

[55] As noted in the statement of the case, above, the complaint alleges broadly that the Respondent violated Section 8(a)(5) by reason of its overall bad-faith dealing with the Union, as reflected by its conduct both at and away from the bargaining table. Without limiting the generality of the broad claim, the complaint also contains a number of [60] specific allegations. Three of such specific allegations are relied upon

by the General Counsel not only as lending support to the broad bad-faith bargaining allegation, but also as spelling out in themselves independent violations of Section 8(a)(5) and (1). Two relate to the Respondent's failure and refusal to supply information requested by the Union; the [5] third, to the Respondent's attempts to engage in direct bargaining at local levels in derogation of the Union's status as national bargaining agent.

Before proceeding to an analysis of the central issue of [10] overall bad-faith bargaining, I shall consider first the alleged independent violations.

2. Refusal to furnish information

[15] a. *The specific allegations of the complaint*

Numerous references have been made above to the Company's reactions to union requests for cost and other information during the course of negotiations. All of them are relied upon by the General Counsel—he so [20] made clear at the hearing—as evidence of an attitude antithetical to good-faith bargaining. But the specific items on which he would predicate findings of independent violations are those alleged in the complaint as follows:

[25] [12] f. Since on or about August 31, 1960, Respondent has refused timely to furnish to the Union data in its possession requested by the Union on August 31, 1960, and at various times thereafter, relating to the cost of a fourth week of vacation for employees [30] with more than 20 years of service.

g. Since on or about September 22, 1960 . . . Respondent has refused timely to furnish to the Union data . . . relating to: (1) The cost of various pension and [35] insurance proposals; (2) The number and categories of laid off and recalled employees for each of the units described in Appendix A; and (3) the number of employees in each of such units with between 20 and 25 years of continuous service with the Respondent.

[40] The facts relating to the foregoing allegations, although heretofore touched upon in part, have not yet been fully developed. This will be done now.

[45] b. *The applicable facts*

The facts with respect to 12(f) are as follows: On August 24, 1960,[81] during a discussion of the Union's vacation and holiday demands, Jandreau for the Union asked the Company to "get for us the actual number [50] of people that you have with one year of service and the actual number of people you have with 20 years of service so we can understand the problem." Shortly thereafter, Carey made it clear that the Union desired the information to determine the costs in cents per hour of the Union's demand for a fourth week of vacation for employees with 20 years or more service, [55] pointing out that the Company had put costs in issue by labeling the Union's demands as "astronomical." In response to Jandreau's specific request, Hilbert stated, "I don't think we have that information," adding that the Company had already spent a considerable

[60] [81] The August 31 date alleged in the complaint is inexact, but the variance is found immaterial.

sum in supplying other information to the Union earlier that year. Although Jandreau stated his belief that

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the Company did have the information, Hilbert expressed no willingness to find out. The ensuing discussion of the Union's request was in terms of companywide costs, the Company making clear that any benefits it offered the Union would also have to be extended to other employees. The record [5] shows that the Company actually had at its New York headquarters figures showing the number of employees with 20 years' service on a companywide basis. It did not have such figures broken down according to IUE units. But even if it interpreted the Union's request to call for that breakdown, such information was readily obtainable through plant location sources.

[10] At the August 31 meeting, Jandreau repeated his request of the week before, explaining that he wanted that information because the Company was so concerned about costs. Moore's only reply was that the Company "discussed the level of benefits."[82]

[15] As will later be shown, the Company did not provide the Union with the information first requested on August 24, until more than 2 months later, after the end of the strike.

[20] The facts with respect to paragraph 12(g) of the complaint are as follows:

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[55] [82] Moore testified that the Company did not regard information requests "as serious requests until they are pressed through a letter." But Moore did not tell this to the Union, basing the refusal on another ground. There is no record support for the assertion in the [60] Respondent's brief that it was the "uncontroverted practice" of the parties to require consideration only of *written* requests.

Prior to September 22, the Union made a number of oral requests for information relating to the costs of the Company's overall offer. The [25] Company's response invariably was that it did not know, or that it bargained on the level of benefits, not costs.

At the meeting of September 8—the last one before the IUE convention—the Union, during a discussion of its request that a modified [30] SUB program be substituted for income extension aid, sought information as to the number of employees who might be expected to benefit under the Company's IEA proposal. More specifically, it asked for the number of employees who on the basis of the Company's past 2 years' experience were laid off for more than 6 months and who would, therefore, have qualified [35] under the Company's proposed IEA plan. Moore replied, "Somewhere between zero and 100%." When the Union persisted, Moore stated that the Company would take the Union's request under consideration if it were made in writing.

At the September 22 meeting, Carey handed Moore a letter requesting [40] the following information with respect to the employees in each of the GE bargaining units represented by the Union and its locals:

A. Cost per employee, and also for employee dependents, of each proposed new insurance benefit, and or each proposed [45] increment in existing benefits, broken down into:

(1) Cents per month premium, and

(2) Cents per month net cost estimated on basis of the [50] Company's 1959 experience.

B. Cost in cents per hour per employee of the proposed increment in each of the pension benefits.

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C. Number of employees on the Company's recall list as of June 30, 1960, for

(1) Less than 6 months

(2) More than 6 months and less than 1 year

(3) More than 1 year

D. Number of employees who have been recalled since January 1, 1960, and who, prior to their recall, had been laid off.

(1) Less than 6 months

(2) More than 6 months

(3) More than 1 year

E. Number of employees with (a) 20 years (b) 25 years or more [20] continuous service.

The letter stated that the information requested was necessary to allow the Union to "appraise the cost of [GE's] proposals" and "determine the number of people who might benefit by them." The Union asked that this information [25] be furnished without delay.

After reading the letter, Moore said that the request only repeated items that had been asked for previously; that the information was not pertinent; and that the Company either did not have it or would have to [30] go to great expense to get it. He declined to comment specifically on any separate item in the request, but said the

Union would receive a reply to its letter. Hilbert asked how the information requested would advance bargaining. The union representatives answered that complete information always advanced bargaining; that, for example, a showing that the difference [35] in cost was slight would advance the Union's position that an extra week's vacation should be granted after 20 years' instead of after 25 years' service. The Union also pointed out that the Company had talked of costs when the Union was presenting its demands, but that now that the Company's offer was in, the Company talked in terms of level of benefits.

[40] The Company treated the Union's request both casually and with extreme literalness. Sometime during the following week, on September 26 or 27, Hilbert made inquiry of the Company's Accounting Services consultants as to the availability of the requested information. The [45] pension consultant was asked if the information was available in *the form requested.* He said it was not and that it would be a major job to compile it in that particular form. He was asked no further questions. The insurance consultant also stated that he did not have the requested information *in the form requested.* He was asked no further questions. The consultant [50] handling layoff and other information said the information *in the form requested* was not available in New York and would have to be obtained by contacting the plant locations. Hilbert, as appears from his testimony, told that consultant not to bother doing anything further at that time. His stated reason: He was hopeful the Union would drop the whole thing [55] after the Company submitted its reply.

With respect to the availability of the specific information in the form requested, the record shows the following:

[60] The Company's insurance plan was maintained on a companywide basis. It was administered by an insurance carrier under a contract providing for negotiated premium rates for each type of coverage. The negotiated rates were, however, subject to revision based upon actual experience, so that its

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actual costs, over any given period, could not be determined until the experience was incurred. On the basis of the negotiated rates the Company could have responded to item A(1) since the premium rates were alike on any given coverage for all participating employees throughout [5] the Company.[83] With respect to data requested in A(2), the Company had available its estimated costs for each proposed increment in existing benefits on a companywide basis. The Company does not maintain separate experience information tied to separate IUE units or locations. For it to have produced separate cost estimates on that basis would have involved [10] a substantial cost (estimated at the hearing at $65,000) and many months to compile. Because of variable experience factors, the actual cost at one location will of course differ from that of another. But the Company operates its insurance plan on a companywide basis as a single plan and computes its own costs, just as the insurance carrier computes its [15] pre-

[55] [83] It is noted, however, that only one of the Company's proposed insurance changes—an increase in maternity benefits—involved a change in premium rate. Three others involved changes in the relatively share of overall insurance costs to be borne by the Company under the contributory plan, but no added premium. They were waiver of contributions for laid-off [60] employees with 3 or more years' service; 31 days continuation of dependent coverage for dependents of deceased employees; and waiver, for 1 year, of contributions for dependent coverage for totally disabled employees. The final change—medical expense conversion privilege for terminated employee—involved no added premium or cost.

miums, without group distinctions based on locations or bargaining units. The company witness conceded at the hearing, that on the basis of the available companywide estimates, it would have been a matter of simple arithmetic for the Company to have calculated the average cost of the insurance improvements, in terms of costs per hour per employee, on a [20] companywide basis. The Company had no certain knowledge that this would not have satisfied the Union.

What has been said about the insurance information applies equally to the pension cost information requested in item B of the Union's [25] letter. The pension plan also is operated on a companywide basis and the Company makes its cost computations and estimates on that basis. Of course, on a fragmentized basis, the average per employee cost would differ from unit to unit because of such variables as average length of service, earnings, turnover and the like. For the Company to have gathered the [30] information and made the actual studies to determine the cost per hour per employee of the pension benefit increments for each IUE unit separately would have cost it—according to an estimate it has since made—several hundred thousand dollars and have taken months to compile. But the Company on the basis of the companywide estimates it had on hand could have readily [35] provided the Union with average cost per hour per employee figures. When pension information had been offered the Union in the past on a companywide basis, the Union had accepted it.

As for the information referred to in items C, D and E, it appears [40] that the Company also had such information

available at its New York headquarters compiled on a companywide basis, but without any separate breakdown for IUE units. The information in the specific form requested was readily obtainable from plant locations. Although this would involve some delay, the expense and effort of getting it would not have been unduly [45] burdensome.

To resume the chronology of events: At the September 27 meeting, Carey complained about the Company's failure to supply the information the Union asked for in its September 22 letter, again pointed out the Union's [50] need for the information, and requested the mediators' aid in obtaining it. Moore told Carey, "You'll get the information when we get it, Mr. Carey, or if we feel we should get it for you."

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On September 28, Moore in a letter to Carey expressed surprise at the IUE's September 22 request, complained of its "eleventh hour timing," stated that the Company had referred the Union's request to its accountants to determine the availability of the information, and said it "should have [5] this answer within a few days."[84] The letter then went on to comment on specific items embodied in the Union's September 22 request.

As for the information requested in items A and B, the letter stated that the information was "not available," that it was "on its face [10] purely speculative," and that, furthermore, "the cost to *the Company* of any of its proposals [had] no proper place in our negotiations." The

[40] [84] This does not square with Hilbert's testimony, earlier referred to, that the Company had already received a report from its accountants.

Company did not disclose that the reason for the asserted unavailability was that it kept its records and prepared its cost estimates on a companywide basis.[85] It neither offered the information in the alternative forms that were [15] available nor inquired whether the alternative forms would satisfy the Union's needs. Its reticence here is in sharp contrast with its conduct during the prenegotiation period when, as earlier found, it displayed a cooperative attitude with regard to furnishing union-requested information.[86] [20] As for items C and D, the letter simply stated that it "would probably take some time to dig out" the information.

As for item E, the letter stated that the Company did not have [25] the figures available on a unit-by-unit basis, but added that the Company's "accounting people a few weeks ago set out to make a companywide estimate in response to an oral request for companywide figures from one of the members of your bargaining team." The letter reported that the estimate so made indicated that the number of employees with 25 or more years' service [30] averaged just under 10 percent of the Company's employees. The letter did not report the percentage of employees with 20 or more years' service. Actually, the only "oral request"

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[85] Compare the Company's disclosure of that fact with respect to the 25-year service information, *infra*.

[45] [86] On March 7, 1960, the Union had made a written request for information relating to layoffs and other matters. The information was requested for each bargaining unit on a monthly basis. When the Company sent the Union some of the information on April 8, 1960, much of it was not in the form specified. As to other information, the Company then explained:

[50] Although the precise information requested cannot be obtained without undue expense, we can provide that type of information . . . on a plant-by-plant basis rather than a unit-by-unit basis. If you believe such substitute information will be useful to you, please let us know and [55] we will have it put together.

Later, the Union informed the Company it would accept the information in the form convenient to the Company.

made "a few weeks ago" was for employees in the 20-year bracket. Hilbert admitted, while testifying, that the Company had readily available at that time information that would have enabled it to [35] provide an estimate of the percentage of employees in the 20-year bracket on the same companywide basis. The Company gave no explanation for its failure to provide that figure, even though it was aware of the importance attached to it by the Union, to advance its position that a fourth week of vacation should be allowed after 20 rather than 25 years' service.[87]

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At the October 7 meeting, the Union renewed its request for the information referred to in its letter of September 22. In response, Moore told the mediator that the Union had already received the Company's answer. To this, Hilbert added that since the matter was now before the National [5] Labor Relations Board, the Company would let the Board take care of the request.[88] No other reason was given.

The Company admittedly made no effort at any time to obtain the information called for in items A and B of the Union's written request. [10] It took no active steps to collect the information requested in items C, D and E until after the end of the strike.

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[87] Both figures were needed by the Union to calculate the difference in costs. The relevance of this cost information is pointed up by what the [60] Company was telling employees in its communications. It will be recalled that in a talk to Schenectady employees on September 21, Stevens emphasized the "very sizeable increase in cost" that would be involved in extending the fourth week of vacation to 20 years service employees, adding that the Company could not incur the added cost without [50] jeopardizing the future of its business and the security of employee jobs.

[88] On October 4, the Union had filed a refusal-to-bargain charge based in part upon the Company's refusal to supply requested information.

At the contract drafting meeting on October 27, Hilbert asked Sigal if the Union was still interested in receiving the information [15] requested on September 22. Sigal said, yes. Hilbert then said the Company would not provide the information requested in items A and B but would supply the rest. Thereafter, the Company furnished the Union with information on the 25-year service employees in two installments, on October 28 and November 7. Reports on the balance of the C, D and E [20] information were furnished on November 7, 1960, and February 10, 1961.

c. *Consideration of Respondent's defenses and concluding findings*

[25] There can be little doubt that all the information requested in the Union's September 22 letter was both relevant to matters under negotiation and necessary to enable the Union to bargain intelligently. The cost of the added pension and insurance benefits requested in items A and B was relevant and necessary not only to enable the Union to appraise the value [30] of the economic package the Company was offering, but also to allow it to assess the validity of arguments the Company was making, such as, for example, the Company's contention that its economic offer compared favorably in value with then current wage settlement patterns. Further, notwithstanding the Company's claim made whenever cost information was sought that it [35] considered only level of benefits, much of the Company's justification for its offer both in and out of the conference room, and particularly in its communications to employees, was based on overall costs and the asserted

jeopardy to the success of its business and to employee jobs that any enlargement of the costs of its offer would entail. In so doing, the Company [40] itself made costs a relevant bargaining issue. The Respondent's contention that the costs to an employer of pension and insurance programs, as distinguished from the employee benefits thereby provided, are unrelated to wages and conditions of employment and therefore of no concern to employees, has been considered and rejected by the Board in earlier cases holding that [45] an employer is obligated under the act to make such pension and insurance cost information available to a union.[89] The information requested in

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items C and D was quite clearly relevant and necessary for an intelligent appraisal by the Union of the Company's income extension aid proposal, both with respect to the number of employees who stood likely to benefit from it—the precise information sought—and the probable cost of that [5] proposal to the Company. The information was pertinent, moreover, to the issues arising from the Union's demand for SUB as an alternative to or in conjunction with income extension aid. The 25-year service information

[89] *Sylvania Electric Products, Inc.*, 127 NLRB 924; *John S. Swift Co., Inc.*, 124 NLRB 394; *Stowe-Woodward, Inc.*, 123 NLRB 287; *Phelps Dodge Copper* [55] *Products Corporation*, 101 NLRB 360. Although *Sylvania* was reversed by the First Circuit in *N. L. R. B. v. Sylvania Electric Products, Inc.*, 291 F. 2d 128—the case upon which the Respondent principally relies—the Board has since expressed its nonacquiescence in the court's decision. *Electric Furnace Co.*, 137 NLRB No. 120. Moreover, the instant case is [60] distinguishable from the court's decision in *Sylvania* because here, unlike *Sylvania*, costs were in issue and, besides, the benefits plans were contributory. True, the costs of proposed new increments in the benefits plans were to be borne entirely by the Company. But such added [55] costs affected the proportionate shares of the total costs payable by the Company and the employees respectively as joint contributors. The extent to which they did so were matters of relevant interest to the Union and information it was entitled to have. *Phelps Dodge* [60] *Copper Products Corporation, supra; Skyland Hosiery Mills*, 108 NLRB 1600.

requested in item E was obviously necessary to allow the Union to compare the value of the holiday-vacation options with the 1 percent wage reduction [10] the Union would have to yield as the price therefor; also to assess the value of the options in terms of the number of employees who might benefit thereby. The particular relevance of the 20-year service information requested in the same item has already been pointed out above.

[15] As shown, the Company refused to provide any of the information called for in items A and B, just as it had theretofore consistently refused to supply any other information relating to the costs of its offer. As to those items the Company defends its refusal on three grounds.

[20] First, it contends that cost information as to its pension and insurance proposals could not be legally required because employees were not being asked to bear any part of the cost of the new increments. That contention is rejected on the authority of the Board's decision in *Sylvania* and for other reasons set out above.

[25] Secondly, the Company contends that the information sought was "speculative." It is quite true that, except for the premium figures, the information requested in items A and B was aimed at obtaining cost estimates, the accuracy of which could not be determined with finality until after [30] actual operating experience. But, estimates are not "speculative" except in the loosest sense of the term, simply because they are estimates. And particularly is this so where the estimates are based on the application of actuarial standards as in the case of pensions and insurance. In composing its offer the Company considered the cost estimates prepared by its experts [35] as sufficiently

reliable for it to support a business judgment thereon. The Company was not being asked to guarantee that future experience would prove its cost projections accurate. The fact that the estimates might be subject to a possible margin of error neither destroyed their value to the negotiators nor excused their withholding.

[40] Finally, the Company defends on the ground of unavailability. The Company, to be sure, did not have and could not have produced without undue burden the requested cost information predicated on the artificial assumption that each IUE unit also constituted a separate pension and [45] insurance unit for purposes of actuarial computations. But it did have estimates from which it could have readily furnished the per employee cost information computed on a companywide basis. The latter would have conformed to the unit basis on which the Company operates its insurance and pension plans and computes its premium and other costs thereunder. In these [50] circumstances, the Company was not obliged to furnish the information requested in the exact form called for by a literal reading of the Union's letter. But if the Company's strict construction of the Union's request was in truth the basis for its refusal, minimum standards of good faith

required the Company at least to inform the Union as to the specific reason for unavailability, to disclose the alternative basis on which such information might be made available, and to inquire whether that alternative would be acceptable.[90] In the past, the Union had accepted information

[55] [90] *J. I. Case Co.*, 118 NLRB 520, 523, enfd. 253 F. 2d 149 (C. A. 7); *Peyton Packing Co.*, 129 NLRB 1358, 1362. *Cf. Old Line Life Insurance Co.*, 96 NLRB 499, 502-503.

[5] in alternative forms where it was not available in the precise form requested. The Company had no affirmative basis for belief that the Union would not also have done so in this instance rather than get no information at all. The Company's consistent prior refusals to comply with oral requests for cost information—assertedly on the ground that only levels [10] of benefit were relevant—as well as the additional reasons stated for its refusal in this instance, confirm that the Company's true reason for withholding the information which it did have available, and which would have substantially met the purposes of the Union's request, was not unavailability but unwillingness to disclose the cost information to the [15] Union in *any* form. I find on all the evidence that the Company's failure to tender the cost information it had available on a companywide basis constituted bad faith.

As found, the information called for in items C, D and E was [20] eventually furnished, but not until after the end of the strike when it no longer had value in the negotiations. The law is of course clear that the obligation to furnish on request relevant information must be honored within a reasonable time and is not satisfied by late submission where diligent efforts to furnish it timely have not been made.[91] The Company [25] stresses that it did not have the information in the form requested available in New York and had to collect it from IUE locations. That is true. But the record does not support a finding that this would have imposed an undue burden on the Company. All its New York headquarters had to do was to broadcast a letter or teletype request to the plant locations; the rest

[91] *Utica Observer Dispatch, Inc.*, 111 NLRB 58, 63, enfd. 299 F. 2d 575 [60] (C. A. 2); *Reed & Prince Mfg. Co.*, 96 NLRB 850, 853, enfd. 205 F. 2d 131 (C. A. 1).

[30] was merely a matter of mechanical collection from records already at hand. The important fact is that GE headquarters chose to wait more than a month until after the strike was over before it so much as initiated the process of collection by communicating a request for the information to IUE locations. In an attempt to justify the long delay, the Company adduced [35] testimony to the effect that it was decided on September 29 not to send out a request to the locations because the locations were then busily engaged in making preparations for the strike that appeared then to be imminent, and that nothing further was done during the strike because the Union was engaging in mass picketing and violence at some of the locations, thereby [40] restraining administrative personnel as well as other employees from coming to work. The foregoing explanation, even if credited, would not of course account for the Company's inaction during the week preceding September 29. And as for the period during the strike, the asserted difficulties in collecting the data are at best theoretical because the Company concededly [45] made no effort to do so, not only at these plants where the Union is said to have engaged in mass picketing and violence, but at numerous other plants where no such conduct is charged. At any rate, the explanation so given, stated for the first time at the hearing, impressed me as one contrived in retrospect, and I do not credit it. It seems to me that if [50] that were the true reason for the Company's inaction, the Company would not have hesitated to declare it to the Union. Yet on October 7, when the Union repeated its request for the information, the Company made no mention of any such reason to explain its failure to comply. The only reason then

given was that the Union had filed a charge with the Board and that the Company would now let the Board take care of the request. That position of course is indefensible. An employer's obligation to bargain is not suspended by the filing of charges.[92]

[5] The other defenses urged by the Company as to the C, D and E information relate, not to the delay, but to the Company's claim that it was under no obligation to honor the Union's request at all. Thus the Company suggests that it was free to ignore the request because the request [10] was untimely "both in terms of its remoteness from the start of bargaining and its proximity to the end of the contract." But that position is patently untenable, particularly when one considers the specific bargaining issues to which the desired information was related and the prior oral requests which had been disregarded.[93] The Company further contends that [15] the information was not available at company headquarters and would have taken some time to collect. But the fact is that the company negotiators did not so much as check with the plant locations to determine how long it would take, let alone asked for it, despite the conceded relevance of this information to bargaining issues. Quite clearly the Company did not [20] consider the task of collection an "unreasonable burden" once the Union had capitulated and bargaining was over. The Company in its brief also contends that all of the information

[92] *Samuel Bingham Sons Mfg. Co.*, 111 NLRB 508, 510, enfd. 277 F. 2d (C. A. 5).

[93] The recall information related primarily to income extension aid which [45] was first placed on the bargaining table on August 30. An oral request for the same information had been made on September 8. The 25-year service information related to the holiday-vacation option which was first *formally* put on the bargaining table on September 20. The 20-year service information had been orally requested as far back as August 24.

sought by items C, D and E was already in the possession of IUE Local Union officials at the time of the Union's request. No such justification was ever advanced to the Union, however, and the [25] record as it stands does not substantially support the factual predicate for that contention—a contention which was not raised or litigated at the hearing and is mentioned as an apparent afterthought for the first time in the Company's brief.[94]

[30] I conclude and find that the record substantially supports the allegations of paragraphs 12(f) and (g) of the complaint, and that the Respondent's conduct therein alleged, considered in the light of the entire record in this case, was violative of Section 8(a)(5) and (1) of the Act.

[35] 3. Local bargaining

The relevant facts relating to local bargaining—to the extent found established by the record—have been set out in detail in section P, above. They are to be considered along with the findings relating to IUE's [40] status as national bargaining representative made in section B, above.

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As found above, the Respondent on September 30, 1960, by direct communication to its Schenectady employees of-

[50] [94] To support that contention, the Company has directed attention in its brief to an article in the 1955-1960 agreement requiring the Company to supply Local IUE officials with information concerning layoffs and recalls. There is, however, no record evidence to show whether such information was in fact furnished and, if so, whether it was furnished [55] in such written or other durable form as to have been available to the Union when it made its request. If the Company actually believed at the time that the information was already available to the Union through its locals, and was guided accordingly, I think it highly unlikely that the Company would have refrained from expressly mentioning this to the [60] Union as a reason for noncompliance.

fered to keep in effect at that plant beyond October 1, provided the employees there did not strike, all terms of the old contract (except the escalator clause), including [5] union-related and grievance-related conditions. Shortly thereafter, the Respondent's representative at that plant made or offered to make a separate agreement to that effect with the Schenectady Local's business agent, confirmed in writing on October 4. Respondent offered the same separate agreement that day to the Pittsfield Local and broadly [10] publicized it to Pittsfield employees. The strike-truce conditions offered the Schenectady and Pittsfield Locals were more favorable than those theretofore offered the IUE in national negotiations. It was not until after a charge was filed, based in part on the offer made to the Schenectady Local, that the Respondent made the same offer to the IUE [15] negotiating committee. Notwithstanding the Union's rejection of the offer, the Respondent thereafter proceeded to make it on a separate local-by-local basis at various locations, including Lynn, Waterford, Louisville, and Bridgeville, through direct contact with local officials, combined with appeals to employees urging them to induce local acceptance. At Syracuse, [20] the Respondent solicited the Local, through its president, to abandon the strike locally and to return employees to work on the basis of the nationally rejected truce proposal which Schenectady had since accepted. The Syracuse solicitation was accompanied by a promise of benefit to the Local president and possibly also to some 16 other suspended strikers.

[25] The General Counsel contends in substance that the Respondent, in derogation of the Union's status as national bargaining agent and in order to undermine the Union's

authority as such bargaining agent, sought by the aforesaid conduct to bypass the Union and to deal directly with Locals [30] and/or employees with respect to terms and conditions of employment and other matters properly subject to national negotiations.[95] The General Counsel takes the position that the Respondent's conduct now specifically under scrutiny must, when considered in the context of the entire record, be viewed not only as evidence of the Respondent's overall [35] bad faith, but also as independently violative of Section 8(a)(5) and (1). On all the relevant evidence, I am persuaded that the General Counsel's position is substantially supported.

The law is of course well settled that it is the duty of an [40] employer to bargain exclusively with the chosen representative of his employees, an obligation which "exacts the negative duty to treat with no other." *Medo Photo S. Corp. v. N. L. R. B.*, 321 U. S. 678. It has frequently been held violative of 8(a)(5) and (1) of the Act for an employer to attempt to bypass a designated bargaining agent by dealing directly with [45] employees, individually or as a group, or, for that matter, similar to the situation here, with a representative of a segment of a bargaining unit, such as for example, with a local where an international union is the bargaining agent for a broader group. See, *e.g.*, *Eastern Massachusetts Street Railway*, 110 NLRB 1963; *John L. Clemney Co., Inc.*, 118 NLRB 599;

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[50] [95] As supporting evidence of the Respondent's purpose to undermine, the General Counsel points particularly to the Respondent's contemporaneous efforts through its massive communications program to impair the [55] prestige, authority and effectiveness of the Union as bargaining agent, by seeking to discredit the IUE top officials in the eyes of the employees and to induce and encourage employees not to follow the leadership of the IUE national negotiators with respect to bargaining and strike decisions, all as reflected by factual findings made above.

Quaker State Oil Refinery Co., 121 NLRB 334, 338, 367, 368, enfd. 270 F. 2d 40, 45-46, cert. denied 361 U. S. 917; *Wooster Division of Borg-Warner*, 113 NLRB 1288, 1296, 1328, enfd. insofar as material, 236 F. 2d 898 (C. A. 6); *Guistina Bros. Lumber Co.*, 116 NLRB 700, 727.

[5] The Respondent would distinguish the situation here as to some of the incidents complained of on the ground that they occurred at locations where IUE locals rather than the IUE itself had been certified by the Board as the bargaining representatives. That was so at Schenectady, [10] Pittsfield, Lynn, and Syracuse, but not at Louisville, Waterford and Bridgeville, where the IUE itself was certified.[96] As related to the Locals separately certified, the Respondent contends that the General Counsel's allegations of unlawful direct dealing must be found fatally defective as a matter of law on the theory, so stated by it, that "it is perfectly [15] appropriate for an employer to deal with a certified bargaining representative *at any time.*"

In the particular circumstances of this case, I am unable to agree. It has already been found (see section B, above) that as a result [20] of the historical pattern of bargaining followed by the IUE and GE, and concurred in as well by the IUE locals involved, the parties have established a workable relationship under which the IUE, through its GE Conference Board, is considered with respect to the negotiation of national agreements and matters related thereto the sole bargaining agent—so recognized and [25] acknowledged by GE—for all employees in the aggregate

[55] [96] As found above, the IUE at plants where it is directly certified has Local Unions which represent employees at local levels in substantially the same manner as do the IUE locals which are directly certified.

of IUE units represented on the Conference Board.[97] The relationship so established is analogous in kind to that which exists between an employers' association authorized to bargain on behalf of a multiemployer group and a single union which has historically bargained with the association on the basis of the [30] multiemployer unit. In fact, the situation here presents a stronger case for indivisible bargaining; for unlike employers whose bonds are artificial and who are free at appropriate periods to withdraw at will, the Locals are all bound together and to their parent by virtue of their common affiliation and the Union's constitutional provisions imposing joint bargaining on them [35] in circumstances like those in the instant case. The same underlying principles that make it improper in a multiemployer situation for a union to attempt through direct dealing with individual employer members to fragmentize the multiemployer group apply with equal strength to the converse situation that is here presented. Where, as here, a party to [40] negotiations has consented in advance thereof to recognize and deal with a common bargaining agent authorized to act for and bind all members of a multiple group on a joint basis, and has entered into negotiations with the group bargaining agent on that basis, fair dealing requires that party, at least while negotiations are still in progress, to honor fully the [45] recognition that has been accorded and to comply exactly with the form of single dealing that has been undertaken. Separate or attempted separate dealing during such negotiations with a member or fraction of the multiple group undercuts the authority to deal for all that has been delegated to the recognized bargaining agent, denies that agent the full

[60] [97] *Cf., Radio Corporation of America*, 135 NLRB No. 100.

measure of [50] recognition that is its due, tends to subvert the agreed upon mode of bargaining, and is wholly repugnant to basic standards of good faith. To hold in the particular circumstances of this case that the Respondent was justified simply because of the Local's separate certifications in ignoring the Locals' delegation of bargaining authority to the IUE and in

disregarding the historical and agreed upon method of bargaining, would be to fly in the teeth of the foregoing principles, exalting form over substance.[98]

[5] What has just been said is not to be read as impliedly holding that the Respondent, having once consented to and participated in multiunit bargaining with the IUE, is foreclosed forever from withdrawing from that arrangement without the Union's consent. That question is not now before the Board and is not here decided. It is held, however, that [10] at the very least the principles enunciated in *Retail Associates, Inc.*, 120 NLRB 388, 390, are applicable. In other words, assuming the Respondent's freedom to withdraw, the Respondent was required to declare an unequivocal election to do so at an appropriate time. It could not, however, in good conscience and good faith deal with the Union as [15] bargaining agent and at the same time seek to undercut the Union's authority as such agent.

[98] *Cheney California Lumber Co.*, 130 NLRB 235, upon which the Respondent principally relies, is not authority to the contrary. In *Cheney*, the [55] Board particularly stressed that the employer, for whose employees the respondent union in that case had theretofore been separately certified, had designated the employer association to act as bargaining agent "for the purpose of recommendation only" and had "retained full freedom to accept or reject recommendations that might be made by [60] [the Association]." Other cases cited by the Respondent have been considered and are found wholly inapposite.

Here the Respondent participated in multiunit negotiations with the Union as the recognized representative alone authorized to engage in national negotiations, not only before and after, but at the very time it was seeking to deal separately with Locals on strike-truce arrangements. [20] Under the circumstances, the Company is now estopped from asserting that it was also entitled to bargain on a separate local-by-local basis. See *Detroit Window Cleaners Local 139*, 126 NLRB 63; *cf. Eastern Massachusetts Street Railway, supra.*

[25] It is quite clear that the subject of strike-truce conditions fell within the compass of the Union's delegated and recognized authority as national bargaining agent under the historical pattern of bargaining as developed by the parties. The strike grew out of national negotiations. Whether or not there was to be a truce and, if so, the terms and conditions [30] of employment that were to apply in that event, were, therefore, subjects to be dealt with in national negotiations. It was the Respondent's clear duty to bargain on that subject exclusively with the IUE and not to attempt to bypass it through separate dealings with Locals on whose behalf the IUE was then acting as bargaining agent.

[35] As found, the truce condition offered the Schenectady and Pittsfield Locals were more favorable than those theretofore offered the IUE. Apart from the legal defense already considered and rejected, the Respondent in its brief claims it was justified in bypassing the IUE at those locations [40] for a variety of other stated reasons. They are found insufficient. The Respondent stresses that at the

September 29 meeting it had not *refused* union-related conditions but had simply declared that it would have to "consider" later whether and under what conditions it might retain them in effect after the contract's expiration date. The Schenectady Local's [45] original decision not to participate in the strike, says the Respondent, compelled it to decide with regard to that location the question it had told the national negotiators it would have to "consider." But this neither explains nor excuses the Respondent's failure to communicate its decision first to the national negotiators. It is undisputed that the [50] decision to keep in effect at Schenectady *all* contract conditions except

for escalation, so long as Schenectady remained at work, was made on September 29. That was the very day the Respondent had reiterated that it would regard its contractual commitments as having come to an end on October 1, and had declined in response to the mediators' strike-truce [5] proposal to commit itself to do more than maintain in effect the then current pay and fringe benefits, adding only that it would have to "consider" what to do about union-related conditions. It is noted that two bargaining meetings were held between September 29 and the start of the strike, at which the Respondent could have communicated to the Union [10] its decision on the reserved question and at least have given the Union an opportunity to consider it. Yet it chose to remain silent at the national negotiations while speaking out at Schenectady, thereby revealing a deliberate purpose to bypass the Union and to offer Schenectady a special incentive to en-

courage its nonsupport of the Union's strike decision.[39] [15] certainly, the excuse offered as to Schenectady could have no application to Pittsfield where the Local, although previously voting not to strike, had joined the strike at its inception. The offer there, which, as the record shows, was authorized by GE headquarters during the strike, could have had as its only purpose the proffer of a special inducement to the [20] Local to abandon the strike. By way of further excuse for its failure to communicate to the Union the strike-truce conditions it offered directly to the Locals, the Respondent points to the fact that a chain-wide strike had in the meantime intervened and asserts that it had reason to believe the Union would reject any contract extension offer that did not include [25] the escalator clause. But the intervention of the strike did not reduce the Respondent's bargaining obligations to the Union. And the assertion of anticipatory rejection serves only to highlight the Respondent's aim to undermine the Union's agency authority.

[30] The alleged offers of separate strike-truce terms on a local-by-local basis at Lynn, Waterford, Louisville and Bridgeville differ from the Schenectady and Pittsfield situations in that they were made *after* the same offer had already been presented to and rejected by the IUE Negotiating Committee. The Respondent contends that as a consequence of [35] the IUE's rejection it was entirely lawful for it to reiterate to Local officials the terms and

[39] The Respondent's calculated purpose to undercut the authority of the Union as national bargaining agent is further reflected by the alacrity [60] with which ERM Stevens responded to Jandreau's message to Schenectady Local members, relating to the absence of contractual protections, with a written commitment to continue in effect the provisions of the old contract as long as the Local was not on strike.

conditions which it had already told the IUE it was prepared to reestablish at any IUE unit not on strike. Its conduct, argues the Respondent, must at worst be viewed as standing on the same legal footing as that of an employer who, absent threats or promises, [40] solicits strikers to return to work upon terms and conditions previously offered their union.

Though the Respondent's position appears at first blush to have plausibility, it does not withstand the test of closer analysis. To begin [45] with, I am unable to agree that the Respondent in contacting Local officials was simply interested in *reporting* the offer it had made at the national level. At Lynn, the Respondent expressly proposed the *negotiation* of a separate memorandum of intent. The Respondent's letter there made no reference at all to the Respondent's proposal in national negotiations. [50] At Waterford, Louisville and Bridgeville, to be sure, no separate *written* agreement was proposed. But when the content of the letters and the obviously pointed purpose in directing the letters to top Local officials is considered along with the explanations therefor in contemporaneous employee communications, there can be little doubt that the Respondent was inviting, [55] if not indeed affirmatively proposing, separate Local strike-truce arrangements.

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As for the Respondent's suggested legal analogy, it cannot be doubted of course that an employer has a lawful right after good faith bargaining to an impasse to put into effect unilaterally new terms and conditions he has already offered a union and to solicit strikers to [5] return to

work on that basis. But that is not the situation here, even if it be assumed both that the Respondent had otherwise met the standards of good faith bargaining and that a legally sufficient impasse situation might be found to exist separately on the strike-truce issue while negotiations were still proceeding without an impasse on other bargaining [10] issues.[100] Here the Respondent had not already put into effect the contract conditions referred to in its proposal. As matters then stood GE was operating its struck plants under terms and conditions of employment that provided only for the continuation of current pay and fringe benefits for employees working during the strike or for strikers returning to work [15] as individuals. Under the Respondent's proposal, the reestablishment at any IUE unit of other contract conditions, such as the union-related and grievance-related conditions, was contingent, not only upon the return of strikers to work, but on official Local Union action, supported by public announcement to that effect by Local Union officials, calling the [20] strike to a halt. In other words, the Respondent's strike-truce proposal as directed to individual Locals called in substance for *separate Local Union acceptance,* without regard to IUE national acceptance, of the Respondent's strike-truce proposal as the *quid pro quo* for reestablishment. For reasons earlier indicated, this quite clearly was an attempt by the Respondent to [25] bypass the Union by dealing directly with a segment of the group represented by the Union, tantamount to dealing directly with employees. As such, it was in clear derogation of the Union's status and authority as the national bargaining agent. See, *Guistina*

[100] *Cf. Herman Sausage Co.*, 122 NLRB 168, 171-2, enfd. 275 F. 2d 299 (C. A. 5).

Bros. Lumber Co., 116 NLRB 700, 727; *The Stanley Works*, 108 NLRB 734, 735-736.

[30] Apart from being in derogation of the Union's agency status, the Respondent's conduct now under consideration constituted, it is found, unlawful solicitations to induce employee abandonment of the strike.[101] This was clearly so at Syracuse, Schenectady and Pittsfield where the [35] Respondent held out an offer of special benefits in return—at Syracuse in the form of a promise to lift the suspension of the Local's president and perhaps others, and at Schenectady and Pittsfield in the form of proffered reinstatement of contract conditions then not available to other locals. At Lynn, Waterford, Louisville and Pittsfield, the benefits offered [40] were by then already available to all other locals. But there, no less than at Schenectady and Pittsfield, the solicitations were of a kind reasonably calculated to undermine the authority of the Union —and this for reasons earlier indicated. That such was the Respondent's actual purpose is fairly to be inferred, moreover, from the surrounding circumstances. Particular [45] reference is made to the Respondent's contemporaneous efforts through its communications program to discredit the motives of the IUE's top leadership and to induce and encourage employee nonsupport of the Union's bargaining and strike decisions.

[50] On all the evidence, I conclude and find that the Respondent's aforesaid attempts while engaged in national

[101] See, *e.g.*, *The Texas Company*, 93 NLRB 1358; *West Coast Luggage Co.*, [60] 105 NLRB 414, 420; *Wooster Division of Borg-Warner Corp.*, 113 NLRB 1288, 1296, 1328, enfd. insofar as material, 236 F. 2d 898; *Guistina Bros. Lumber Co., supra; Federal Dairy Co., Inc.*, 130 NLRB 1158, 1170, 1172.

negotiations with the Union to deal separately with Locals on matters properly the subject of national negotiations and its solicitations of Locals separately to abandon or refrain from supporting the strike—when considered in the context of all the [55] circumstances of this case—constituted conduct violative of Section 8(a)(5) and (1).

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V. *Analysis and concluding findings as to the alleged overall bad-faith bargaining*

(1)

[5] I here consider the broad allegation of the complaint that the Respondent at all times since June 13, 1960, negotiated with the Union in bad faith. This allegation places in issue the Respondent's overall course of conduct, both at and away from the conference room, as it bears [10] on the Respondent's bargaining frame of mind during the entire period of negotiations. Included within the framework of that issue are the specific allegations of the complaint adverted to in section A, above, among them the alleged independent violations that have already been considered and ruled upon.

[15] In considering this issue, we are faced with the threshold question as to the applicable principles that must govern decision. The Respondent places principal reliance upon the caveat in Section 8(d) that the bargaining obligation "does not compel either party to agree to a proposal or require [20] the making of a concession." The Respondent would have the Board read 8(d)—in a situation where, as here, an employer has met and conferred with a union and has not insisted upon the inclusion of unlawful or nonmandatory contractual provisions—as allowing a finding of bad-faith bargaining *only* where it is

established that the employer negotiated with a desire *not* to [25] reach an agreement. The state of mind with which an employer negotiates, argues the Respondent, is material solely to the narrow issue of whether the employer was genuinely desirous of entering into an agreement with the union, though only on his own terms, or was desirous instead of evading agreement altogether. But, says the Respondent, once it has been established, [30] as it has been in this case, that the employer was willing to enter into a collective-bargaining agreement, no issue of good faith remains, and the Board has no more business to intrude itself into the manner in which negotiations were conducted or the methods or techniques used by the employer to achieve his bargaining objectives than it has to intermeddle with the [35] substantive terms of the bargain.

The narrow standard urged by the Respondent undoubtedly provides one test for assessing the presence or absence of bargaining good faith. But it can by no means be regarded as an exclusive one. It is obviously [40] at odds with the numerous cases in which an employer's willingness to enter into a collective-bargaining contract on his own terms, or even his actual execution of one, was insufficient to preclude a conclusion of bad-faith bargaining.[102] It is also at variance with Congress' primary purpose in enacting Section 8(b)(3), the counterpart of 8(a)(5). As was pointed out in [45] *N. L. R. B. v. Insurance Agents*, 361 U. S. 477, 487, Section 8(b)(3) was primarily intended

[50] [102] See, *e.g.*, *Southern Saddlery Company*, 90 NLRB 1205, 1207-8, and cases cited therein; *N. L. R. B. v. Truitt Mfg. Co.*, 351 U. S. 149; *N. L. R. B. v.* [55] *Sharon Hats*, 289 F. 2d 628 (C. A. 5) enfg. 127 NLRB 947; *"M" System, Inc.*, 129 NLRB 527; *Clinton Foods*, 112 NLRB 239, 261; *Phelps Dodge*, 101 NLRB 360; *Andrew Jergens Company*, 76 NLRB 363.

"to prevent employee representatives from putting forth the same take it or leave it attitude that had been condemned in management." The bargaining objective of a union is almost always to obtain an agreement, and the take-it-or-leave-it bargaining attitude at which 8(b)(3) is largely

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aimed presumes willingness to enter into an agreement.[103] It is of course clear that the duty to bargain imposed on unions was intended to be the same as that imposed on employers.

[5] Section 8(d) lays down no rigid yardsticks for the measurement of good faith, and understandably so, for "good faith" is an elastic concept that can have "meaning only in its application to the particular facts of a particular case." *N. L. R. B. v. American National Insurance Co.*, 343 U. S. 395, 410. Certain broad principles of general application have [10] become well established, however. The statutory injunction to "confer in good faith," as is obvious from its own terms, calls for more than ritualistic performance, even where a collective-bargaining relationship is not sought to be avoided.[104] Good faith, to be sure, does not require the yielding of positions fairly maintained. And no inference of bad faith [15] may be drawn

[103] The proponents of Section 8(b)(3) made it clear that their target was the elimination of take-it-or-leave-it bargaining occurring in meetings [40] and conferences as well as in attempts to impose agreements on employers without formal meetings and conferences. Senator Ellender, 2 Leg. Hist. 1062, 1244; Senator Knowland, 2 leg. Hist. 1172; Senator Morse, 2 Leg. Hist. 982; Senator Taft, 2 Leg. Hist. 1012.

[104] As stated in the *Insurance Agents* case, *supra*, at p. 485, "Collective [45] bargaining, then, is not simply an occasion for purely formal meetings between management and labor, while each maintains an attitude of take-it-or-leave-it. It presupposes a desire to reach ultimate agreement . . . ."

solely from a party's failure to retreat from originally declared positions. (*Bethlehem Steel Co.—Shipbuilding Division,* 133 NLRB 1347).[105] However, intransigence coupled with other evidence may under certain circumstances support a finding of an uncompromising attitude indicative of bad faith (*N. L. R. B. v. Fitzgerald Mills Corp., supra*) The [20] 8(d) caveat on which the Respondent relies was not designed as a shield to protect "surface bargaining."[106] Good faith requires parties to negotiation not only to have a sincere desire to reach agreement, but also to make an earnest effort to reach common ground through the processes of collective bargaining.[107] The latter requirement does not mean that [25] an employer (or union) must yield its freedom to reject proposals or to refrain from making concessions unacceptable to him. But it does mean, *inter alia,* that the negotiating parties must approach bargaining with a mind accessible to persuasion; that they must follow procedures increasing the prospects of a negotiated agreement; that they must regard all proper [30] issues before them as issues to be resolved through the processes and procedures of collective bargaining; that they must be willing "to discuss freely and fully their respective claims and demands, and, when these are opposed to justify them on reason";[108] and

[105] By the same token, the fact that a party has made "concessions here and [50] there" does not alone conclusively establish his good faith. *N. L. R. B. v. Herman Sausage Co.,* 275 F. 2d 229, 231-232; *N. L. R. B. v. Fitzgerald Mills Corporation* (C. A. 2), 51 LRRM 2174.

[106] *N. L. R. B. v. Herman Sausage Co., supra.*

[107] *Cox, Good Faith Bargaining,* 71 Harvard Law Review 1401, 1416-1418. [55] See, too, Section 204(a)(1) of the Act which requires employers and unions to "exert every reasonable effort to make and maintain agreements concerning rates of pay, hours, and working conditions." In *N. L. R. B. v. Truitt Mfg. Co.,* 351 U. S. 149, 152, the court equated the 204(a)(1) duty with the duty under Section 8(a)(5) and 8(d).

[60] [108] *N. L. R. B. v. George P. Pilling & Sons,* 119 F. 2d 32, 37 (C .A. 3),

that they must be willing at least to consider and explore with an open mind compromise proposals or [35] other possible solutions of their differences in an effort to find a mutually satisfactory basis for agreement.[109]

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"[The] duty of management to bargain in good faith is essentially a corollary of its duty to recognize the union."[110] Performance of that duty therefore also contemplates full acceptance by management of the representative status of the Union, not as a bare advisor, but as a joint [5] participant in the establishment of wages, hours and working conditions. Conduct reflecting a rejection of the principle of collective bargaining or an underlying purpose to bypass or undermine the status, authority or prestige of the union while negotiations are in progress evidences the absence of a good faith effort to compose differences and to reach [10] agreement in the manner the Act commands.[111] The same is true of conduct which "minimizes the influence of organized bargaining" and emphasizes to employees "that there is no necessity for a collective bargaining agent."[112]

[15] Compliance with the bargaining obligation also requires—as was most recently stated by the Supreme Court

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[109] *N. L. R. B. v. Insurance Agents Union, supra*, at pp. 485-488; *Globe Cotton Mills v. N. L. R. B.*, 103 F. 2d 91, 94. See, also, *Cox, supra*, note at pp. 1411, 1418. *Cox and Dunlop*, Regulation of Collective Bargaining by the National Labor Relations Board, 63 Harv. L. Rev. 389, 422.

[110] *Insurance Agents* case, *supra*, at pp. 484-5.

[60] [111] *"M" System, Inc.*, 129 NLRB 527, 547; *N. L. R. B. v. Fitzgerald Mills, supra.*

[112] *May Department Stores v. N. L. R. B.*, 326 U. S. 376.

in *N. L. R. B. v. Katz*, 369 U. S. 736, 747—that the negotiating parties refrain from

> behavior which is in effect a refusal to bargain, or *which* [20] *directly obstructs or inhibits the actual process of discussion*, or which reflects a cast of mind against reaching agreement (Emphasis supplied).

Good faith, or the want of it, is concerned essentially with the [25] state of mind with which the party charged with a refusal to bargain has entered into and participated in the bargaining process. In determining whether a party has bargained in bad faith, the Board is not confined to a consideration of what was said or done in the conference room, but may also take into account other related conduct. Determination of that issue

> [30] normally can rest only on an inference based upon more or less persuasive manifestations of [that] state of mind. The previous relations of the parties, antecedent events explaining behavior at the bargaining table, and the course [35] of negotiations constitute the raw facts for reaching such a determination. *N. L. R. B. v. Truitt Mfg. Co.*, *supra*, at p. 155.

All aspects of the Respondent's bargaining and related conduct must be considered, not as separate fragments, each to be assessed in isolation, but [40] in unity. As stated by Mr. Justice Frankfurter, in his separate opinion in the *Insurance Agents* case, *supra*, pp. 505-506,

> Activities in isolation may be wholly innocent, lawful and "protected" by the Act, but that ought not to bar the Board [45] from finding, if the record justifies it, that the isolated parts "are bound together as part of a single plan [to frustrate agreement]. The plan may

make the parts unlawful." *Swift & Co.*, 196 U. S. 375, 396.

[50] Applying to this case the principles set forth above, I am satisfied that the General Counsel has sustained the allegation of overall bad-faith bargaining. I reach that conclusion on the basis of the totality of the Respondent's conduct, both at and away from the bargaining table, taking particularly into account the cumulative force of considerations to be [55] pointed up below, but only after weighing all other relevant circumstances in this case, those favorable to the Respondent as well as those opposed.

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(2)

The complaint, as amended, alleges that the Respondent bargained in bad faith on and after June 13, 1960. The date stated is the date the [5] Union presented its offer at an informal meeting. Formal contract negotiations, however, did not actually begin until July 19, 1960. Apart from the employee communications criticizing the offer—a subject to be dealt with later—the only matter of consequence that occurred in the interim related to the personal accident insurance matter, the facts of [10] which are reported in section D, above. As appears from the findings there made, the personal accident insurance matter is outside the mainstream of this case since it was not *directly* involved in the subsequent contract negotiations. However, it was specifically referred to by the General Counsel in his bill of particulars as an item on which he relied to

support his [15] broad bad-faith bargaining allegation.[113] Although the General Counsel stated at the hearing that he was not contending that it was a "*per se* violation," the issue relating to it was fully litigated and briefed by all parties as a distinct element in the case.[114] On the basis of the facts developed, it is quite clear—and, indeed the Respondent does not dispute— [20] that the proposed additional accident insurance, though to be paid for entirely by the employees, involved a bargainable subject, no less than contributory insurance. *Phelps Dodge Copper Products Corp.*, 101 NLRB 360; *General Motors Corp.*, 81 NLRB 779, enfd. 179 F. 2d 221 (C. A. 2). On the strength of the Board's decision in *Equitable Life Insurance Co.*, 133 NLRB [25] 1675, 1688-1694, which is clearly controlling, I find that the Respondent's presentation of its personal accident insurance proposal to the Union on a conceded take-it-or-leave-it basis constituted a rejection of the principle of collective bargaining, violative of Section 8(a)(5) of the Act, thereby reflecting adversely on the Respondent's general attitude toward collective [30] bargaining.[115]

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[45] [113] The bill alleged: "Commencing on or about June 13, 1960, Respondent refused to negotiate in good faith with the Union concerning Respondent's offer to make Personal Accident Insurance available to Union represented employees."

[50] [114] A finding of a separate violation based thereon was requested by the Union in its brief and at oral argument.

[115] I find no merit to the Respondent's defense that its conduct was justified because under an express waiver provision in the 1955 Pension and Insurance Agreement neither party could require the other [55] during the life of the agreement to bargain with respect to insurance and pension matters. Substantially the same defense was raised and rejected in *Equitable*—though there based on the statutory 8(d) provision to like effect. Nor do I find it a valid basis for distinction, as urged by the Respondent, that *Equitable* involved [60] wages, whereas the instant situation involved a "relatively insignificant [item] in terms of the total wage and benefit program in effect." The obligation to bargain on mandatory subjects does not turn on the value of the item to be bargained about.

(3)

The Respondent's negotiating frame of mind during the negotiations [35] which formally began on July 13 must be assessed against the backdrop of its bargaining philosophy, outlined in section C(1), above. Analysis of the record shows that the Respondent substantially adhered to that philosophy during its 1960 contract negotiations with the IUE.

[40] Some 6 weeks of meetings (18 sessions) preceded the presentation of the Respondent's offer. During that time the Union was afforded an opportunity formally to present and argue its contract demands. It is quite clear, however, that the Respondent regarded the pre-offer meetings primarily

as "listening" sessions, forming but one element of the "research" in which it engages before making its unilateral determination of "everything it believes to be right" for incorporation in its "fair, firm offer."

[5] There can be little doubt of the Respondent's bargaining bad faith during at least the 4 weeks (12 sessions) of early negotiations devoted to employment security matters. As found in section F(1), above, the parties had agreed that the early meetings would be *negotiating* and not simply review meetings, and that an effort would be made to reach [10] agreement on employment security subjects before the negotiations turned to other subjects beginning August 16, 1960. Nevertheless, as the findings in section G, above, show, the Respondent entered into and partici-

pated in the early meeting without any intent to attempt to reach agreement on employment security. Long before the early negotiations, the Respondent [15] in its communications program to employees had in effect committed itself to reject the Union's employment security proposals and at the meetings simply reiterated, albeit with greater detail, positions already publicly taken. In some instances, the Respondent also gave reasons for rejection shown by later developments not to have been its true reasons. During the [20] 4 weeks of early negotiations, the Respondent gave no indication whatever to the Union of the employment security program it was eventually to include in its offer to the IUE and other unions. The Union was thus denied an opportunity to consider, comment on, or propose compromise or other alternatives to the Respondent's employment security program during the [25] sessions that had been specifically set aside for the negotiation of employment security items, and prior to the time the Respondent's position was bound to become hardened by virtue of its "fair, firm offer" and uniformity policies.

[30] During the 2 weeks devoted to the presentation of the Union's general demands, other than employment security, the Respondent continued to take the position that it was primarily interested in "fact finding," thus following the script of its approach to collective bargaining as set out in section C(1), above. Though the Respondent discussed with the Union [35] the latter's specific demands and in many instances expressed positions on such demands, where its position was one of rejection, it declined to declare any affirmative views on the key subjects of wage increases, pensions, insurance and other economic benefits, except to make clear that it intended to eliminate the

escalator clause. Standing alone, no inference of bad faith [40] may be drawn from the Respondent's failure to declare itself affirmatively at this time. Whether an employer declares his affirmative thinking on each item of a union's proposal before passing on to the next, or elects instead to hear out the union on all its demands before making any counter-proposals, is normally a matter of bargaining technique that lies outside the [45] scrutiny of the Board. Listening to a union's demands is part of the process of collective bargaining, though not the fulfillment thereof. In this case, as in others, however, the Respondent's conduct must be examined in the light of whether it was prepared in truth, not merely in form, to complete the process of bargaining later. To suggest, as the Respondent's [50] declared bargaining approach appears to do, that an employer need only listen to a union's demands and supporting arguments as part of a broader research program, frame an offer on the basis of his own overall research, and then consider only such *new* information as might reveal a factual error in the offer, is to place a union in the role of an advisor rather than a [55] participant in the determination of employment terms through the process of collective bargaining; it is to deny the Union the status to which the Act entitles it. At any rate, the fact remains that until the Respondent gave specific indication of its own line of thinking on key issues, there could be no full or meaningful bargaining, for, without issue joined, discussions [60] could take place only in a vacuum, precluding any possibility of give-and-take that might be necessary to forge agreement.

Thus, if any genuine bargaining were to occur, it had to begin at the time the Respondent's offer was made.

(4)

[5] When the Respondent formally presented its offer on August 30, it was responsive to the Union's demands only in small part. It contained features relating to benefits, employment security and even contract language that were entirely different from those had been requested [10] by the Union. During the earlier negotiations there had been neither mention nor discussion of them as contemplated alternatives to the Union's proposals. The Respondent explained to the Union, as it did later to the employees, that it had made its offer responsive to "employee desires" as determined by its own extensive research and surveys. The Respondent thus [15] made it plain that it assigned the Union a subordinate or at most only a contributing role as the spokesman for employees.

The Union declared the same day that the offer was unacceptable, and that the proposals of both parties should form the basis of collective [20] bargaining. It requested that negotiations continue for 3 days without the pressures and glare of publicity. The Respondent, however, rejected the Union's request, giving as its reason that employees should know at once what was on the table. And the following morning, it proceeded to publicize its offer, release it to other unions, and present it directly [25] to employees at plant meetings as well as through employee communication channels, disregarding the Union's vigorous objection that to do so would prematurely "freeze" its position and thereby interfere with good-faith negotiations.

[30] In the particular circumstances of this case, I find that the Respondent's haste to publicize its offer reflected the want of an earnest effort on its part to seek through the processes of collective bargaining a possible basis for mutual agreement, and constituted clear evidence of bad faith.

[35] The Union's objection that publication would operate to "freeze" the Respondent's position was well-founded. The Respondent's action must be considered, not in the abstract, but in the context of its "fair firm offer" approach to bargaining and its uniformity policy, as outlined in [40] section C(1), above.[116] The Respondent's "fair, firm offer" approach, although assertedly leaving room for the correction of factual error disclosed by additional information from any source or a subsequent significant economic change, rejects in effect concessions, trading or compromise as a means of finding common ground. In the light of the [45] Respondent's widely advertised bargaining philosophy, the publication of the offer was a clear indication that the Respondent as a matter of policy would not thereafter consider with an open mind proposed concessions, compromises or other suggested solutions of differences between the parties aimed at achieving through the give-and-take of collective bargaining an [50] accommodation of conflicting positions.[117]

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[116] The Respondent's intention to follow in 1960 the "Boulware" approach to bargaining is reflected by Vice President Parker's comments to plant managers and other members of GE supervision in early 1960, as reported [55] in section C(2), above. It will be recalled that Parker described that approach as follows:

> The Boulware approach to this has been that we would go forward and do the things we felt appropriate. We would then offer these to the Union, and if they saw fit to accept [60] them, why God bless them, but if they didn't, well they could do something else.

[117] *Cf. California Girl, Inc.*, 129 NLRB 209, 212. "While the Act does not require that either party yield to the other's proposals, there must be at least a capacity and potentiality for yielding . . ."

The Respondent's publication of its offer and simultaneous presentation to other unions also brought into play a further constricting factor—the Respondent's uniformity policy, to which the Respondent was likewise committed. That policy, had it stood alone, would not of course [5] preclude the Respondent from adding to its offer to the Union and then making the additions available to other unions and nonrepresented employees. But it does not stand alone, and taken in conjunction with the "fair, firm offer" policy does have such a preclusive effect. Even were that not so, the uniformity policy nevertheless had the operative effect—once the [10] Respondent's basic offer was published—of obstructing openminded consideration by the Respondent of modifications in or alternatives to its basic offer that might be proposed by the Union but not be desired by other labor organizations with which the Respondent dealt. This was especially true in the areas relating to companywide benefit plans, such as pensions and [15] insurance and income extension aid, where the Respondent considered complete uniformity important or, as in the case of pension benefits at least, absolutely essential. This is not to condemn the Respondent's desire for uniformity as such, nor is it to suggest that the Respondent was dutybound to complete its negotiations with the Union before presenting its offer to [20] other unions. The point I make is that, as a minimum, good-faith bargaining required the Respondent, before chaining itself to its uniformity policy, to give the Union an adequate opportunity to present and argue its demands and priority desires, not in a vacuum, but in the light of the Respondent's disclosed affirmative positions, and in that context to explore with the [25] Union possible alternative courses or

compromise solutions that might lead to a mutually satisfactory accord.

That does not mean of course that the Respondent had to submit to endless discussions before finalizing its offer. It is quite clear, [30] however, considering the magnitude of the negotiations here involved, that 1 day was far too little and 3 days certainly not too much. The situation here might have been different had the Respondent disclosed to the Union during the earlier negotiations—before it announced its offer—the affirmative proposals it had under consideration and had then provided an [35] adequate opportunity for discussion, exploration, and consideration of alternative courses or solutions that might bring the parties together. But this it did not do.[118] It chose instead to disclose its affirmative positions for the first time in its "fair, firm offer"—an offer which in most basic respects was unresponsive to the Union's demands, substituting [40] for some of them different approaches never theretofore explored in the negotiations—and to bind its offer after only 1 day's discussion to policies inhibiting and obstructing its bona fide consideration thereafter of conflicting union positions on contract issues. The course the Respondent chose amounted in effect to a unilateral determination of employment terms, [45] leaving negotiations thereafter—unless it deviated from its own policies—an empty exercise with predetermined results.[119]

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[118] In the respect stated, among others, this case is clearly distinguishable from *The Philip Carey Manufacturing Company* case, 140 NLRB No. 90, [50] recently decided by the Board.

[119] It may well be that any other course would have confronted the Respondent with practical procedural difficulties in achieving its aim for substantial

(Footnote continued on following page)

(5)

The course taken by the Respondent in the negotiations is not alone enough to establish, but neither is it such as to rebut, if found established by other circumstances, an inference that the Respondent negotiated with a fixed predetermination not to deviate materially from its bargaining policies. During the approximately 25 meetings that took place between August 30, when the Respondent presented its offer, and October 19, when the Respondent declared an impasse, the Respondent made [10] only two changes in its offer that it considered of sufficient consequence to mention in its employee communications. One was the "early signing bonus" change, not requested by the Union, which was announced just before the IUE convention recess and was thereafter capitalized upon in the Respondent's communication program aimed at weakening employee support of the Union. [15] The other was the holiday-vacation option which was offered in the face of the Union's theretofore declared opposition thereto and was represented to employees as being a voluntary rearrangement of its offer in response to employee desires. Far from showing good faith, or a departure from the Respondent's declared bargaining policies, the circumstances surrounding [20] the original offer of the holiday-vacation option—set out in

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(Footnote continued from preceding page)

contract uniformity in its multiple union relationships. That aim, however, while entirely legitimate in itself, cannot be [55] elevated to a principle excusing noncompliance with good-faith bargaining procedures. Just because the Respondent might find it procedurally inconvenient or impracticable to realize its uniformity goal by engaging in full bargaining with *all* unions before freezing its offer is no justification for its failure to bargain with any one union—and [60] particularly the IUE, by far the largest union in its chain. *Inland Steel Co.*, 77 NLRB 1, 11, 32, enfd. 170 F. 2d 247 (C. A. 7), cert. den. 336 U. S. 960. Effectuation of the Respondent's private policies cannot be made paramount to the Act's command.

section L, above—evidence, it is found, precisely the opposite. Of the remaining three changes made during the period stated, two—providing for the furnishing of actuarial information relating to the pension and insurance plans—did no more than confirm an already existing practice. Moreover, [25] they involved noneconomic changes outside the Respondent's basic offer. The third—the Exclusion K change, of uncertain date—[120] involved a minor revision in the companywide Insurance Plan. Although regarded as an improvement by the Union, it was not a concession in the sense that it met a specific union demand, nor was it a change specifically negotiated. [30] This, in the Respondent's view, may well have fallen within the category of a voluntary adjustment of "error" disclosed by new information. The elimination of the retraining provision, stressed by the Respondent in its brief, occurred after the Union strike capitulation, and, as shown by the findings in section R, above, reflects, if anything, not a deviation from [35] but a stubborn adherence to its bargaining policies during the period of negotiations when the Respondent was seeking to impress on employees that its offer was immutable. The remaining modifications, reported in section O, above, occurred during the postsettlement meetings and are of little value in appraising the Respondent's bargaining frame of mind during the period [40] of actual negotiations.[121]

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[120] See section O, above.

[121] As to practically all of them, the Respondent either gave up nothing [55] or actually improved its position. The Respondent points to its agreement to continue the Burlington and Bucyrus units under the national agreement as the clearest evidence of its good faith. However, I do not understand that any claim is being made in this case that the Respondent was seeking to rid itself of the Union. The issue of good—or bad—[60] faith in this case turns on entirely different considerations, to which the point made by the Respondent is irrelevant.

Intermediate Report.

As already noted, the ultimate issue in this case, whether the Respondent's overall conduct in the negotiations constituted good—or bad—faith bargaining, cannot be decided on the basis of the substantive positions [45] the Respondent took, but must rest on "inference based on more or less persuasive manifestations of [its] state of mind." Some of the considerations bearing on that point have already been stated. Others, disclosed by its contemporaneous conduct away from the conference room and by its behavior at the bargaining table, other than as shown by its stand on substantive [50] issues, will be covered below.

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(6)

The Respondent's communications program and related conduct, now to be considered, bears significantly on the frame of mind with which [5] the Respondent participated in the 1960 negotiations.

The Respondent's communications program has been dealt with in various sections, above.[122] As has been seen, the Respondent through its extensive employee communication system (a) anticipated the Union's [10] major bargaining demands long before the start of negotiations and began to condition employee attitudes to a favorable reception of its views and rejection of the Union's conflicting positions; (b) after the presentation of the Union's demands but before the actual start of negotiations, vigorously criticized the Union's demands as endangering job security and [15] questioned the motives of the IUE leadership; (c) during the negotiations, continued along the

[55] [122] For a general summary covering the period after the start of negotiations, see section F(3).

lines above indicated, and, in addition, presented, at some plants practically on a daily basis, reports on the progress of negotiations, highly slanted in its favor; and (d) following the presentation of its offer deluged employees with communications designed to induce them [20] to pressure the Union into acceptance of its offer, to discredit the motives and integrity of the IUE leadership, and to achieve other objectives presently to be more specifically adverted to.

It was found in section C(1), above, that the Respondent's approach [25] to collective bargaining has as its keystone the direct marketing to employees of management bargaining positions on bargaining issues designed to induce employee pressures for union acceptance. The character of the communications the Respondent issued relating to the 1960 negotiations confirms the validity of that finding.

[30] As is evident from Parker's and Moore's remarks to managerial and supervisory employees during their swing around the GE chain in the prenegotiation period—see section C2, above—and as is apparent also from the content of the communications, the Respondent's underlying approach [35] appears to assume, where bargaining issues are concerned, that its employees should be regarded as standing in the position of customers with both the Respondent and the Union competing for their allegiance, trade and support. Such an approach is scarcely conducive to good-faith bargaining, which presupposes that both parties will enter the conference room "with an open [40] mind and a sincere desire to reach an agreement in a spirit of amity and cooperation."[123] It discourages co-

[123] See, *e.g.*, *N. L. R. B. v. Reed & Prince Mfg. Co.*, 118 F. 2d 874, 875; [60] *N. L. R. B. v. Atlanta Broadcasting Co.*, 193 F. 2d 641, 642 (C. A. 5).

operation between management and the employees' bargaining representative by setting off one against the other; breeds resentment, distrust and friction; tends to constrict bargaining mobility because of positions publicly taken; and introduces into [45] deliberations considerations extraneous to bargaining that serve to divert the attention and energies of the negotiators from their main business at hand, the negotiation of an agreement. The underlying concept of the Respondent's approach, that the Union is a competitor for employee support rather than the voice and ears of the employees it represents, reflects [50] adversely on the quality of the Respondent's recognition of the Union and on the degree of its acceptance of the principles, processes and procedures of collective bargaining. While not controlling in itself, it is a circumstance that must be taken into account in assessing the Respondent's other conduct in this case bearing on its negotiating frame of mind.

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What has just been said is not meant to suggest that it is unlawful as such for an employer to communicate to his employees his positions on subjects involved in bargaining or to report to employees on the progress of bargaining.[124] Nor is it meant to suggest that it [5] is in-

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[40] [124] The Board in a number of cases has declined to base 8(a)(5) findings upon such communications alone, where "in their context and in the context of events [they] were not shown to have been unlawfully motivated." See, *Fitzgerald Mills Corporation*, 133 NLRB 877, 882, [45] note 20, where the cases so holding are collected along with summary descriptions of the nature of the communications involved in each. On the other hand, the Board, with court approval, has considered employer communications to employees as evidence of bad-faith bargaining, where it has found that the communications, in the context of other [50] relevant circumstances, reflected an intent, not simply to inform the employees, but to undermine the representative status, authority or prestige of the Union, as part of a program to evade bargaining obligations under the Act. See, *e.g., Fitzgerald Mills, Inc., supra*, enfd. (C. A. 2) 52 LRRM 2174, 2179; *N. L. R. B. v. Reed & Prince, Inc.*, [55] 112 F. 2d 874, 882 (C. A. 1), enfg. 12 NLRB 974.

trinsically unlawful for an employer to criticize during the course of bargaining the union with which he deals or its leadership. What we are concerned with here is not the legality of the Respondent's communications *per se*, but the Respondent's 1960 bargaining frame of mind as it may be revealed in part by its use of the communications.

[10] I do not understand the General Counsel to claim more, though in one respect his position appears equivocal. At oral argument, the General Counsel agreed—although theretofore his position at the hearing had been variable—that he did not intend to charge a "*per se* violation" [15] by the allegation of his complaint relating to the Respondent's efforts to persuade the employees to "accept" its August 30 offer.[125] However, the General Counsel continued to assert, as he does in his brief, that the Respondent's direct appeals through its communications program to employees as individuals to "accept"—the word is the General Counsel's, [20] not the Respondent's—the Respondent's bargaining positions constituted a form of "direct bargaining" within the interdiction of the *Medo Photo* principle.[126] If so, this would of course spell out a claim of an independent violation. The point, however, is unimportant, for I am persuaded in any event that, except for the direct local bargaining earlier [25] considered, the *Medo Photo* principle has no direct application to the facts of this case. The communications program undoubtedly reflects that the Respondent sought primarily to deal with the Union through the employees rather than with the employees through the Union, thus distorting the accepted

[125] As to the companion allegation, relating to the Respondent's "campaign" to discredit and impugn the motives and abilities of the IUE leadership, the General Counsel made it clear from the beginning that he did not claim this as an independent violation.

[60] [126] *Medo Photo Supply Corp. v. N. L. R. B.*, 321 U. S. 678.

approach. But the Respondent did not seek to *conclude* agree- [30] ments with the employees, or to displace the Union as the contracting party, only to influence employees to bring pressure to bear on the Union's leadership that would force the Union, as their bargaining agent, to accept the Respondent's terms.

[35] But though the communications may have been lawful or even "protected," standing alone, they are nevertheless relevant to the ultimate issue here involved—the state of mind with which the Respondent entered into and participated in the negotiations.[127] For example, the Respondent's

very use of its communications program supplies some basis, although not alone enough, for an inference that the Respondent, having followed its "fair, firm offer" approach to bargaining in that respect, also followed it in others, thereby precluding genuine bargaining for reasons earlier found. [5] More important, a showing that the Respondent's communications program was such as to disclose a determination on its part to rely *entirely* on its effectiveness to achieve acceptance of its contract proposals would provide a basis for an inference that it was sitting out the negotiations while waiting for that program to have its corrosive effect, and was [10] therefore engaging in negotiation with an attitude that was one of evasion rather than fulfillment of its statutory obligation. Of course that

[127] See quotation from separate opinion of Frankfurter, J. in the *Insurance Agents* case, *supra*. The Respondent's defense that Section 8(c) precludes any consideration of the communications as evidence will be considered later.

inference would not along be enough to establish the ultimate conclusion, and would have to be rejected, for example, if shown to be inconsistent with the Respondent's actual conduct at the bargaining table. On the other hand, [15] other manifestations of bad faith at or away from the bargaining table would buttress it. As stated by Frankfurter, J. in the *Insurance Agents* case, *supra*, at p. 508:

> The Board's function in the enforcement of the duty to [20] bargain does not end when it has properly drawn an inference unfavorable to the respondent from particular conduct. It must weigh that inference as part of the totality of inferences which may appropriately be drawn from the entire conduct of the respondent, particularly [25] its conduct at the bargaining table.

Similarly, a showing that the Respondent considered itself bound by expressed policies or positions that "obstruct[ed] or inhibit[ed] the actual process of discussion, or—reflect[ed] a cast of mind against reaching agreement"[128] [30] would also supply a basis for an inference of bad faith.

The character, content and volume of the Respondent's communications program that followed the presentation of its offer—along with its other contemporaneous conduct, some of it containing independent indicia of bad [35] faith—supports, I am persuaded, the several inferences suggested above—and this for the reasons that follow.[129]

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[128] *N. L. R. B. v. Katz, supra.*

[129] The Respondent's communications program prior to August 30 also lends [40] support for such inferences, but only because of what followed. It should be noted, moreover, that the Respondent's communications prior to August 30 are not wanting in independent indicia of bad faith. Thus, as appears from findings earlier made, the Respondent in its communications to employees

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The factual findings earlier made leave little doubt of the Respondent's determination to rely primarily on its employee communications program rather than on negotiations as the means of gaining acceptance of its offer. Thus, Moore in his swing around the GE chain in early 1960 made clear to management personnel that the solution of the 1960 negotiating problems would depend on the Company establishing through its written and oral communications its "credibility" on which it might draw "this fall when the votes are cast whether the folks believe you or believe the opposition." Long before negotiations began, the Respondent laid out, [10] and thereafter followed, a carefully designed program to condition employee attitudes and opinions for the favorable reception of the Respondent's offer and rejection of the Union's competing demands. The paramount importance the Respondent assigned to direct employee persuasion over negotiations is clearly illustrated by its insistent haste in publicizing its offer so [15] that it might get underway the elaborate communications program it had in readiness, despite the Union's reasonable request that such publication be with-

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criticized to employees the Union's demands before [45] first discussing them with the Union, placed a cost estimate on the Union's demands that it later declined during negotiations to justify to the Union, and as to some subjects argued its positions more fully to employees than it did to the Union in the conference room, thereby indicating that it was more concerned with marketing its positions to [50] employees than with persuading their bargaining agent. (*Cf. General Electric Co. v. Gojack*, 68 F. Supp. 686.) The Respondent's one-sided reporting to employees of the progress of the negotiation, while professing a purpose to keep employees "fully informed," is, I find, a further reflection of a lack of good faith. It is also noted that [55] during this period the Respondent, in anticipation of its upcoming offer, stressed its "fair, firm offer" approach to collective bargaining, pointing out, *inter alia*, its policy to put *everything* in its original offer shown by its own thorough research to be "right," not to engage later in haggling or horsetrading, and not to improve its offer because [60] of union belligerence, or to avoid a strike or threat of strike. Taken by and large, however, the communications prior to August 30, had they stood in this case alone, would not, in my opinion, have been sufficient to support a substantial inference of bad-faith bargaining.

held so as not to interfere with bargaining. After presentation of its offer, the Respondent's communications program relating to the negotiations reached massive proportions, thereafter maintained until the [20] end of the strike.[130] The offer, along with the Respondent's justifications for it, was orally presented to employees at plant meetings in a manner calculated to minimize the influence of collective bargaining, to impress upon employees that the Respondent had gone as far as it could without endangering the future of its business and the security of employee jobs, [25] and to make it appear that the only alternative to acceptance was a "longpay-losing strike." At about the same time, the Respondent began, and thereafter continued, to deluge employees with communications, numbering to some plants at least one and sometimes as many as three or four a day, in the form of plant newspapers, daily bulletins, letters to homes, [30] newspaper ads, radio and television messages, etc., extolling the merits of its offer and advancing the Respondent's positions on other issues as they arose, while continuing in the meantime to provide employees with reports, highly slanted in its favor, on the daily course of the negotiations. The Respondent also instructed its supervisors not only to impress [35] upon employees the merits of the Respondent's bargaining position, but also to sound out employee reactions thereto. In addition, the Respondent invited and encouraged employees to discuss directly with plant management questions they might have about the offer, and at one large plant held a series of roundtable meetings for that purpose. The Board has held it to [40] be a form of bypassing, and hence evidence of bad faith, for an employer

[130] See sections F(3), J, N, and P(3), above.

to invite employees to talk directly to management about bargaining matters, or to seek to learn directly from employees their reactions to his bargaining position.[131] It is accordingly so found in this case.

[45] The very massiveness of the communications program is itself a measure of the Respondent's determination to deal essentially, not with the employees through the Union, but with the Union through the employees, evidencing, I find, a purpose to undercut not only the Union's bargaining position, but its authority as bargaining agent as well. The Respondent, [50] to be sure, was not seeking to undermine the Union in the sense of displacing it as the employee representative whose ultimate consent would be required for a contract. But the question here is not whether the Respondent's conduct was illegal *per se*—I have already found it was not. Rather, it is whether such conduct tends to support at least a tentative inference of a [55] frame of mind antithetical to simultaneous good-faith bargaining in the conference room. I think clearly it does.

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Clear corroborating support for such an inference is found in the Respondent's course of conduct which immediately followed the IUE convention, at which the IUE negotiating committee passed a resolution calling for Local votes on the question of acceptance or rejection of [5] the Respondent's offer. The Respondent's reaction to that resolution, described in section N, above, vividly points up (1) the Respondent's utilization of its direct approach to

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[60] [131] *Tex-Tan, Inc.*, 134 NLRB 253, 274; *Crater Lake Machinery Co.*, 131 NLRB 1106; *cf. Harcourt & Co., Inc.*, 98 NLRB 892, where the Board found such conduct violative of 8(a)(1) but not of 8(a)(5).

employees to undercut the Union's bargaining position, authority and prestige; (2) its reliance on that approach as a substitute for genuine bargaining; and (3) the inhibiting [10] impact of that approach on its bargaining frame of mind.

Thus, as has been seen—see section N, above—the Respondent immediately reacted to the convention resolution by interjecting itself into an area, recognized by law to be exclusively one for internal union [15] regulation and of no legitimate employer concern.[132] Bypassing the Union, it contacted IUE Local officials directed in an effort to persuade them to alter the time fixed for the balloting and the question to be voted on. To induce acceptance of its proposals and gain employee support therefor, it offered, *inter alia*, to pay for employee time lost in voting and, at [20] some places, for voting facilities and employee transportation. At the same time, the Respondent loosed a virulent attack on the Union's election plans and on the motives and integrity of the IUE top leadership, containing in part misrepresentations of fact. The tactic of attacking the motives of the IUE leadership had been decided upon as a communications approach [25] long in advance of the negotiations. Considered in the context of accompanying events, the Respondent's aforesaid conduct was, I am persuaded, motivated by a deliberate purpose to undermine the authority and prestige of the union leadership as an aid to the Respondent's direct "selling" bargaining approach. It constituted, I find, a further reflection of an [30] attitude inconsistent with good-faith recognition and dealing with the Union.[133]

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[132] *Wooster Division of Borg-Warner Corp.*, 113 NLRB 1288, 1294, aftd. 356 U. S. 342.

[50] [133] See *N. L. R. B. v. Reed & Prince Mfg. Co.*, 118 F. 2d 874, 881, 882 (C. A. 1); *N. L. R. B. v. Fitzgerald Mills* (C. A. 2), 52 LRRM 2174, 2179.

When, on September 8, the negotiations recessed for the IUE convention, there had been only seven meetings with the Respondent's offer [35] on the table. Under the schedule earlier agreed upon, meetings were to resume on September 20 and continue to the end of the month. The Respondent made no claim then, nor does it now, that an impasse in negotiations had been reached by September 8, nor would such a claim, if made, be valid.[134]

[40] Before meetings resumed on September 20, however, the Respondent, in furtherance of its campaign to induce employees to vote for acceptance of its offer, took steps to announce to employees, *even before it announced to the Union,* that its *full* offer was now on the table and that as a matter of company policy the Respondent would not "up" its offer because of a [45] strike or threat of strike ". . . it never has in the past, and it won't now."

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To give support to the declarations already being made to employees, the Respondent hastened to announce to the Union, almost as the first order of business when negotiations were resumed on September 20, that its offer was now "final" and would not thereafter be altered, a declaration of [5] position which it thereafter continually reiterated during the negotiations and duly reported to employees. To impress further on employees the credibility of its assertions as to the finality of its bargaining stand,

[134] At the time of the recess, the Union's bargaining position was still fluid, and it continued to remain so after negotiations were resumed. It is noted that the Respondent, following the recess, publicly [55] criticized the Union for not continuing negotiations during the convention, even though the recess had been agreed to when the schedule of meetings had originally been set up. Moreover, it was not until after the September 8 meeting adjourned that the Respondent submitted informally its vacation-holiday options. The Respondent [60] during the negotiations did not actually assert an impasse until October 19.

the Respondent on the same day authorized its operating managers to make effective for nonrepresented employees, as of September 12, the wage [10] increases provided for in the Respondent's basic offer to all unions, and to announce the establishment of other benefits that were to become operative on October 2. Two days later the Respondent, substantially conceding but ignoring the Union's objection that its action would inhibit negotiated modifications, authorized the announcement to nonrepresented [15] employees of the pension changes that were not to be operative in any event until the end of the year. As found above, the Respondent's decision to accelerate the announced establishment for nonrepresented employees of the terms of its 1960 basic offer was an integral part of its program to influence IUE employees to vote for acceptance of the Respondent's offer. [20] The inhibiting effect of that action will be pointed out later.

After the IUE convention, no less than before and during the convention, the Respondent continued to flood the employees with a constant stream of communications plugging the merits of its bargaining positions. [25] In some instances it advanced arguments not only more full but different from those presented to the union negotiators at the bargaining table, a circumstance found herein to constitute the clearest evidence of bargaining bad faith.[135] *General Electric Co. v. Gojack, supra.* The employer communications after the convention, as well as throughout the balance of [30] the negotiations, stressed particularly (a) the finality of the Respondent's offer and the futility of further negotiations; (b) the Respondent's firm policy not

[45] [135] See particularly ERM Stevens' remarks to Schenectady employees on September 21 and comments thereon, reported in section X(o), above.

to enlarge its offer because of a strike or threat of strike, regardless of its duration; (c) the asserted "selfish," "irresponsible" and "political" motives of the IUE leadership; and (d) the asserted [35] jeopardy to employee jobs that would flow from any enlargement of the Respondent's offer or from a strike. As found above, the constant repetition of the theme referred to in (d), above, and the manner of its presentation, were such as to reflect a conscious and deliberate purpose to play on employees' fears and insecurities. The Respondent was careful, generally [40] speaking, to couch its warnings of job jeopardy in the form of predictions that cannot be classified as unlawful in themselves. But the record reflects a number of instances[136] where the warnings were such as to be intrinsically coercive.[137] Considered in the context of accompanying events, the

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aforesaid communications program reveals that the Respondent's purpose was not simply to keep employees informed of its views on bargaining and related issues, as it professes. It reflects beyond that, I find, a deliberate design to undermine employee faith and confidence in the [5] Union's leadership and in the efficacy of the collective bar-

[136] See, *e.g.*, Waterford letter to employees, dated September 16, *re* strike bringing about a reversal of promotions, downgradings, etc. (section [50] N(6)); foremen warnings to employees at Lynn, *re* danger of GE top management closing down Lynn plant entirely if a strike ensued (section N(6)); letters of Oakland plant manager to striking employees, dated October 7 and October 14 (section P(3)); Lynn letter to employees, dated October 14 (section P(3)).

[55] [137] See *IUE v. N. L. R. B.*, 289 F. 2d 757, 763; *Haynes Stellite Co.*, 136 NLRB No. 3; *Texas Industries, Inc.*, 139 NLRB No. 22. It is noted that the complaint does not allege any independent interference, restraint and coercion by virtue of the communications. The finding made above is relevant only to the Respondent's 8(c) defense to be considered *infra*.

gaining process. It is difficult to reconcile such an effort outside the conference room with an attitude of good-faith recognition and dealing at the bargaining table.

[10] There can be little doubt from the totality of its conduct that the Respondent was determined—certainly after the resumption of meetings on September 20—merely to go through the motions of bargaining in the conference room and to rely entirely on the effectiveness of its direct "sales" approach to employees to resolve the bargaining issues in its favor. [15] Indeed, the Respondent virtually stated as much when in its Union News Bulletin, dated September 21, it declared.

> And so the real scene of negotiations shifts from New York to all IUE-represented plants. The eventual outcome will [20] be decided there—quite properly—quite soon.

The Respondent in its brief stresses that it did not announce the finality of its offer until after the Union's negotiating committee had made apparent its intention to strike the Respondent at the end of [25] the contract term if the Respondent did not improve its offer in material respects. The point the Respondent seeks to make is not entirely clear.[138] However, the Respondent appears to suggest that the announced finality of its offer, as well as the campaign it waged largely on that basis to reduce employee support for strike action, was, no less than the strike threat, [30] a legitimate bargaining pressure tactic from which no inference of bad faith may be drawn. Elsewhere in its brief, the Respondent points to the rule of the *Insurance Agents*

[55] [138] It is evident of course that a threat of strike does not, any more than a strike itself, suspend the obligation to bargain in good faith. [60] *Pecheur Lozenge Co. v. N. L. R. B.*, 209 F. 2d 393 (C. A. 2).

case, *supra,* that bad faith in negotiations cannot be inferred alone from economic weapons designed to exert pressure in collective bargaining. It argues that if "disruptive" pressure tactics [35] of the kind the union in *Insurance Agents* engaged in do not support a refusal-to-bargain charge, then the Respondent's "protected" tactics in this case certainly cannot. The *Insurance Agents* case, however, provides the Respondent with a weak crutch on which to lean.

[40] In *Insurance Agents* there was no claim of bad faith in the actual negotiations. The sole question there was whether the union's pressure tactics, without more, were sufficient to spell out an 8(b)(3) violation. The court's holding was a narrow one (at 490):

> [45] The scope of § 8(b)(3) and the limitations on Board power which were the design of § 8(d) are exceeded, we hold, by inferring a lack of good faith *not from any deficiencies in the Union's performance at the bargaining table by reason of its attempted use of economic pressure but solely and* [50] *simply because tactics designed to exert economic pressure were employed during good faith negotiations.*

In *N. L. R. B. v. Katz,* 343 U. S. 736, 747, the Supreme Court explained its holding in *Insurance Agents* as follows:

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> We held that Congress had not in § 2(b)(3), the counterpart of § 8(a)(5), empowered the Board to pass judgment on the legitimacy of any particular weapon used in support of genuine bargaining. But the Board *is* authorized to order [5] cessation of behavior which is in effect a refusal to negotiate, or which directly

obstructs or inhibits the actual process of discussion, or which reflects a cast of mind against reaching agreement.

[10] In the instant case, we are concerned not with the legitimacy of the communications and related conduct as such, but with the manner in which they influenced the Respondent's bargaining attitude in the negotiations themselves. As will presently be shown, the record in this case clearly supports a finding that the pressure tactics employed by the [15] Respondent—even assuming their legality otherwise—not only tended to but *did* result in "deficiencies in [its] performance at the bargaining table" that "obstruct[ed] and inhibit[ed]" good faith bargaining. It is to a consideration of this aspect of this case that I now turn.

[20] (7)

Note has already been made of the importance the Respondent attaches to maintaining its credibility with employees for the success of its direct marketing approach to bargaining.

[25] The Respondent's course of conduct was such as to make its continued credibility dependent largely upon intransigence in the negotiations once it presented its offer to the Union, and certainly so once it announced to employees the finality of its bargaining position.

[30] Thus, the Respondent adopted and publicized to employees a bargaining policy under which it committed itself "voluntarily" to include in its original offer *everything* of substance shown by its research to be "right"; to stand firm on that offer except to correct factual errors [35] dis-

closed by new information; and to reject the give-and-take procedures of trading and compromise as a method of resolving bargaining issues. The Respondent emphasized under that declared policy that it would in no event make a change in its offer it believed *not* "right" simply to avert a strike or threat of strike—or, to state the same concept differently, though the [40] Respondent does not formulate it this way, simply to reach an accord. Prior to the presentation of its offer, the Respondent through its communications to employees had already expressed with respect to practically all the Union's significant bargaining demands its firm conviction that they were *not* "right". With the presentation of its offer to the Union, the [45] Respondent mounted, and thereafter maintained, an elaborate sales promotional campaign to impress upon employees the correctness of its offer as opposed to the Union's competing demands, emphasizing also that it had gone in its offer as far as it reasonably could without endangering the future of its business and the security of employee jobs. Then, at a time when the [50] negotiations still had more than 2 weeks to run before the end of the old contract, the Respondent announced to employees the finality of its bargaining position, redeclaring at the same time its firm policy not to yield concessions because of union aggression. Simultaneously, as a tactical measure designed to persuade employees that it meant what it said, the Respondent [55] accelerated the effectiveness for nonrepresented employees of its basic offer. To have enlarged its offer to the Union thereafter would give the lie to its declarations to unorganized employees, and to others as well, that it was company policy "to do right voluntarily," and

that a union could obtain no added benefits it would not otherwise grant.

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The Respondent thus locked itself into a position where it could not deviate significantly from its original offer without impairing the credibility with employees that it considered so basic to its employee relations and the success of its bargaining techniques.

[5] A willingness to deal with a spirit of cooperation and to maintain a state of mind open to persuasion and to the possibility of altering or modifying on a give-and-take basis positions previously asserted is of the essence of good-faith bargaining. But the course the Respondent took [10] was one that could only lead, once its offer was presented, as in fact it did, to a rigidity in its bargaining attitude that is wholly at variance with such good-faith concepts. And particularly was this so once the Respondent elected to place its bargaining position in a deep freeze by declaring to employees the irrevocable finality of its offer.

[15] The Respondent argues that its course of conduct did not preclude changes in its bargaining position even after the announcement of finality to employees, because it still lay within its power to make them. I suppose that this is so theoretically, but not as a practical matter. [20] For example, the Respondent was scarcely likely to consider in good faith union proposals for significant modifications in its offer in early September while engaged in "selling" the offer directly to employees via the elaborate communication program it had earlier prepared, as one that

had been carefully designed to meet their "needs and desires." And it [25] was even less likely, after declaring to employees in mid-September the finality of its bargaining position and building on that foundation its campaign to persuade employees of the futility of strike action, to weaken the force of its campaign by any action that might show it did not mean what it said. I do not doubt that if the Respondent's attempts to gain [30] direct employee support had met with solid resistance and a lengthy strike, the Respondent might have forsaken considerations of prestige for considerations of expediency and retreated from its earlier declared course. But it was highly improbable that the Respondent would risk impairment of its valued credibility with employees by retreat, except as a last result [35] and only after a strike of some duration, a strike which under such circumstances would itself frustrate statutory policy. And in the meantime, the Respondent's bargaining frame of mind was bound to remain constricted by factors impeding the possibility of genuine negotiations.

[40] The foregoing circumstances, I find, support an inference that the Respondent by reason of its calculated course of conduct so made itself a captive of its own bargaining policies as to substantially inhibit and obstruct good-faith negotiations.

[45] On this record, however, it is unnecessary to rely on inference alone to reach that conclusion.

It will be recalled—see section O, above—that is at the meeting of September 28, after the Respondent had rejected a "within-the-framework" [50] compromise proposal by Union Committeeman Jandreau, Jandreau in-

quired whether there was any possibility of the Company "changing its position one iota." Moore stated in reply there was not, explaining, *inter alia:*

> . . . after telling the employees before they went to [55] vote that this [offer] was it, we would look ridiculous to change it at this late date . . ..

Moore did not dispute the Union's charge that the Respondent had in effect shut out its potentiality for bargaining mobility because of what it had told [60] the employees. He reiterated:

> I said two things—one, that everything we think we should do is in the proposal and we told our employees that, and we would look ridiculous if we changed now.

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Hilbert's subsequent colloquy with Jandreau at the same meeting—quoted at length in section O, above—is even more illuminating. It leaves little doubt that the Respondent (1) was closely adhering in the 1960 negotiations to the constrictive tenets of its "fair firm offer" [5] approach, and (2) considered itself chained to that approach for reasons of prestige because of its policy declarations to employees and others. This is apparent from Hilbert's statement of "three possible reasons," wherein he asserted in substance (1) that if the Respondent were to change its offer at that time, it would appear as if the Respondent had [10] intentionally held something back from its original offer and, as a result, *"we would look foolish in the eyes of the employees and others";*[139] (2) that a change might have

[139] Both Hilbert and Moore at the same meeting made clear that they did not [55] consider that any significant changes had been made in the offer up to that point. Hilbert declared "the whole thing has been crystallized for a month now, Mr. Carey, and it has been on the table." Moore stated, "We didn't wait until the last day to put forth a proposal, Mr. Jandreau. It was on the table on August 30 and it is all on the [60] table now."

been allowable if the Respondent "made a serious error, an inadvertent error in the offer," but the Respondent had "no evidence of that," and (3) that if the Respondent were to change its offer [15] just to avoid a strike, *"then we would look even more foolish in the eyes of our people and the country."*

There would have been no reason for the Respondent to have looked "ridiculous" or "foolish" to employees by changing its offer, were it not [20] for the fact that through its policy and other declarations to employees it had made its credibility and prestige dependent upon intransigence in the negotiations.

The statements of Moore and Hilbert at the September 28 meeting [25] thus support and confirm the validity of the "locking in" inference stated above.

(8)

[30] I come now to the Respondent's Section 8(c) defense.[140] The Respondent contends that 8(c) by its terms precludes the Board from in any way considering its employee communications as "evidence" to support, directly or indirectly, the alleged unfair labor practice violations. For reasons stated below, I do not agree.

[35] Preliminarily, it must be emphasized again that the legality of the communications or the right of the Respondent to communicate to employees is not the issue involved. The Respondent's communications have been considered

140 "The expressing of any views, argument or opinion, or the dissemination thereof . . . shall not constitute or be evidence of an unfair labor practice . . . if such expression contains no threat of reprisal or force or promise of benefit."

here only as part of the totality of its conduct reflecting [40] on the state of mind with which it entered into and participated in the negotiations.

The absolutist view the Respondent takes of Section 8(c) is at odds with the legislative history of that section, with the main body of [45] Board and court precedents that relate to it, and with the effectual administration by the Board of the legislative objectives entrusted to it. It is perfectly obvious, to begin with, that Congress could not have intended a strictly literal construction of Section 8(c) which would bar employer expressions from being considered under any circumstances for [50] their probative bearing on unfair labor practices not concerned with the legality of the expressions themselves. Certainly, no one would contend,

for example, that an employer's arguments to a union in the course of bargaining, or to employees where individual or direct bargaining is directly in issue, must be ignored in deciding whether Section 8(a)(5) has been violated. The legislative history of Section 8(c) discloses that [5] Congress' primary purpose in providing that noncoercive expressions should not "be evidence of an unfair labor practice" was to prevent the Board from continuing the practice it had theretofore allegedly followed of linking employer speech with *wholly unrelated* conduct so as to make one or the other illegal.[141] Senator Taft in his analysis of

[141] See, Senator Taft's analysis, 2 Leg. Hist. 1541, 1624; see also, S. Rep. No. 105, 80th Cong., 1st Sess., 23-24 (1947), 1 Leg. Hist. 429-430; [40] H. Conf. Rep. No. 510, 80th Cong., 1st Sess. 45 (1947), 1 Leg. Hist. 549; *Pittsburgh S. S. Co. v. N. L. R. B.*, 180 F. 2d 731, 735 (C. A. 6).

Section 8(c) left no [10] doubt that Congress did not intend that section to be so applied as to "make incompetent evidence which would ordinarily be deemed relevant and admissible in courts of law."[142] The Supreme Court has given approval to that view, expressly where noncoercive speech is found to have been used in the furtherance of an unlawful purpose,[143] implicitly in other situations.[144] Various [15] courts have stated that Section 8(c) was intended to do more than restate the principles embodied in the First Amendment.[145]

It is quite clear of course that where, as here, a respondent's state of mind is in issue, it can only be established by circumstantial [20] evidence. What he says, as well as what he does, including his expressions of views, if they are relevant manifestations of his state of mind, constitute competent evidence bearing on that issue, falling within the category of admissions.[146] Thus, in Section 8(a)(3) cases, the Board, with court approval, frequently considers an employer's closely related expressions [25] of views, argument or opinion, although finding them privileged under Section 8(c), as evidence bearing on the issue of his motive in effecting the discharge.[147] Communications to employees

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[142] 2 Leg. Hist. 1541. Senator Taft cited as an example "statements which might be deemed admissions under ordinary rules of evidence."

[143] *IBEW v. N. L. R. B.*, 341 U. S. 694, 705.

[45] [144] *N. L. R. B. v. United Steelworkers*, 357 U. S. 357. Compare the Court's opinion, particularly at 364, with Chief Justice Warren's dissent. And see Note, 57 Mich. L. R. 615 (1959).

[145] *N. L. R. B. v. LaSalle Steel*, 178 F. 2d 829, 835 (C. A. 7); *N. L. R. B. v. Kropp Forge*, 178 F. 2d 822, 828; *N. L. R. B. v. Bailey Co.*, 180 F. 2d [50] 278, 280 (C. A. 6).

[146] Wigmore on Evidence, 3d ed. §§ 1725, 1731, 1732.

[147] See, *Baker Hotel of Dallas, Inc.*, 134 NLRB 524, 528-529, enfd. (C. A. 5) 51 LRRM 1203; *Southern Desk Co.*, 116 NLRB 1168, 1177, enfd. 246 F. 2d (C. A. 4); *Edward Brothers, Inc.*, 95 NLRB 1451, 1452, note 2.

protected under Section 8(c) have also been held competent evidence in other unfair labor practice situations, where a respondent's state of mind or attitude tends to explain [30] or elucidate the conduct complained of.[148] They are no less so in the situation here involved.[149]

Here, the Respondent's communications program was more closely related to; it formed an integral part of its declared approach to bargaining. [35] Consideration of that program is clearly essential to an understanding of the

Respondent's bargaining frame of mind. To give but one example, the Respondent's attitude at the bargaining table, as reflected by Moore's and Hilbert's statements on September 28, reported shortly above, cannot be interpreted or evaluated except against the backdrop of the communications [5] program.

It must further be noted that many of the statements contained in the communications were *declarations of positions*, rather than expressions of views, argument and opinion in a strict sense. Included within that [10] category are the Respondent's statements concerning its "fair, firm offer" approach, the finality of its bargaining position, and its firm policy not to yield more because of a strike or threat of strike. Declarations of that kind, while not coercive, can scarcely be classified under any reasonable view as the type of expressions 8(c) was designed to exclude [15] from evidentiary consideration if otherwise relevant

[55] [148] See, *e.g., N. L. R. B. v. Power Equipment Co.* (C. A. 6), 52 LRRM 2459, 2462.

[149] *Cf. N. L. R. B. v. Insurance Agents Union, supra*, separate opinion of Frankfurter, J. at p. 506, quoted in subdivision (1) of this analysis.

to the alleged unfair labor practices. Further, as found above, the Respondent's communications were not entirely free from coercive statements, and in some instances held out offers of benefit. The Respondent's communications program, moreover, was closely integrated with other conduct, such as its solicitation of [20] employees to express to company management their views on bargaining issues, the direct interrogation of employees on such matters, efforts to make separate arrangements with local unions relating to the time and wording of the "strike" votes, the acceleration of the effective date of its basic offer for nonrepresented employees, proffers of separate strike-truce terms [25] to certain local unions, etc. The record as a whole fairly supports an inference that the Respondent's entire course of conduct, of which its communications program was an integral part, was aimed at evading its good-faith bargaining obligations. The law is well settled that neither the First Amendment nor 8(c) extends its immunity to speech that merges into [30] and is used in furtherance of a course of conduct designed to violate a statute.[150]

(9)

[35] The findings made in this analysis support a substantial inference that Respondent entered into and participated in negotiations with a frame of mind antithetical to good-faith bargaining. As found in a subsection (5) hereof, the course the Respondent took on substantive issues during the negotiations was not such as to overcome that inference. Other [40] circumstances shown by factual findings,

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[55] [150] *Gibbney v. Empire Storage Co.*, 336 U. S. 490, 498, 502; *N. L. R. B. v. Virginia Electric Power Co.*, 314 U. S. 469, 478; *I. B. E. W. v. N. L. R. B., supra; N. L. R. B. v. Kropp Forge Co., supra.* See, also, *Fitzgerald Mills,* [60] 133 NLRB 877, 882.

not yet alluded to in this analysis, serve substantially to buttress the inference of bargaining bad faith.

Thus, the Respondent's refusal to furnish the Union with relevant and necessary information, discussed at length in section U(2), above, [45] goes beyond establishing an independent violation of section 8(a)(5). It also strongly supports a finding of overall bad faith.[151] The Respondent's refusal to furnish the information was intimately bound up with its attitude, also revealed by other evidence, that its offer was not open to serious challenge, once presented. The fact that the Respondent had been [50] cooperative in supplying information prior to the start of negotiations, and did after the end of the negotiations furnish some of the requested information, serves only to underscore its take-it-or-leave-it attitude during the critical part of the negotiations.

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The Respondent's conduct in bypassing the Union as national bargaining agent in an effort to deal directly with IUE Locals on strike-truce terms—as to which concluding findings were made in section U(3), above—also bears significantly on the Respondent's overall bargaining [5] attitude. Manifestly, the Respondent's action in derogation of the Union's status and authority was incompatible with simultaneous good-faith dealing with the Union at the bargaining table. Moreover, the Company's contemporaneous efforts through its massive communications program, which included misrepresentations of fact,[152] to discredit the IUE

[151] *Phelps Dodge Copper Products Corp.*, 101 NLRB 360, 366; *The Kohler Co.*, 128 NLRB 1062, 1085, enfd. 300 F. 2d 699 (C. A. D. C.).

[50] [152] See, particularly, reference in section P(1), above, to Schenectady communications in which the Respondent falsely represented that the offer being made to the Schenectady Local had earlier been made to [55] Carey and rejected by him.

leadership [10] in the eyes of employees, and otherwise to drive a wedge between the Union and its members, supply added support for the findings earlier made relating to the Respondent's reliance on its communications as a substitute for genuine bargaining.

[15] As previously stated, good-faith bargaining contemplates, *inter alia,* a willingness on the part of negotiating parties "to discuss freely and fully their respective claims and demands, and when these are opposed to justify them on reason." The findings made in the sections of this report dealing with the negotiating sessions, particularly those following [20] the presentation of the Respondent's offer, disclose unmistakably that the Respondent's bargaining behavior fell short of that standard. Thus, on August 31—only 1 day after its offer was presented—the Respondent in effect served notice on the Union that it would be futile for the Union even to attempt to persuade it to alter its fixed positions on three of [25] the Union's principal demands—continuation of the cost-of-living escalator, SUB and the union shop.[153] Thus, too, the Respondent at various times registered impatience with the Union's efforts to have it justify its bargaining positions, and at times, when asked to do so, either refused or shifted to other reasons which it stated in terms so vague or arbitrary as [30] to stifle further meaningful discussion. Specific reference is made to the findings in sections H, K and O, above, pointing up various instances where the Respondent justified its positions on the basis of costs, but, when asked for specifications, either brushed aside the Union's request, or, quickly shifting ground, declared that it did not bargain in terms

[153] See, *Duro Fittings,* 121 NLRB 377.

of [35] costs but on the basis of "level of benefits." Reference is also made to the findings in section K, above, relating to the Respondent's refusal to provide the Union with details concerning other wage settlements on which it had asserted it had relied in part in fashioning its wage offer, and its ultimate position that it did not have to justify its wage offer since [40]it bargained "on what is the appropriate thing to do and the level of benefits." A particularly glaring example of the Respondent's avoidance of justifications is to be found in the varying positions it took on the Union's request to move up the effective date of the increases in guaranteed [45] monthly pensions—discussed at length in section Q, above.[154]

The record contains other indicia of the Respondent's bad-faith approach to bargaining. Thus, as shown in section O, above, the respondent at the end of the strike rejected the Union's request for a reduced committee, [50] three on each side, to attempt to work out differences so as to avoid a strike.

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The rejection alone is of little significance, but the reason given for it is—namely, that the Respondent believed that bargaining should take place only before the full IUE negotiating committee and "*in full view of the public.*" The Respondent's insistence on "gold fish bowl" bargaining [5] is an added indication that it was infinitely more concerned with publicizing its positions directly to employees than

[154] The example cited also points up the Respondent's intransigent attitude generally. Note specifically Moore's repudiation at the September 21 meeting of Hilbert's earlier promise to "consider" the Union's proposed [69] pension plan change, by his declaration that the Company was not "taking anything under advisement for later consideration.

with making an earnest effort to explore the possibilities of finding common ground. The Respondent's refusal on October 14, to produce its pension plan language until full agreement was reached on other documents previously [10] presented, and, more important, its refusal on October 19 to put on the table the complete agreement it was prepared to sign unless and until the Union first expressed its *unqualified* acceptance of the Respondent's proposals, constitute, I find, further evidence of bad faith. Quite clearly, the Union was entitled to see the definitive contract language [15] the Respondent planned to submit—and which the Respondent had indicated it already had prepared—before, not after, committing itself to final acceptance of the Respondent's proposals. For, until such language was produced, the Union could not know what, if any, additional issues might remain open for resolution through the process of collective bargaining.[155] [20] Finally, the Respondent's flat refusal, not satisfactorily explained, to enter into a strike settlement agreement labeled as such, or one bilateral in form, and its insistence upon substituting a "letter of intent," provides, I find, a further reflection of its bad-faith approach to bargaining. [156] It discloses the Respondent's determination to adhere to [25] the end to its basic bargaining philosophy, that employees must be made to understand that what it did it did "voluntarily" and that

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[45] [155] Indeed, as events proved, the Respondent's refusal to provide contract language prior to the strike settlement prevented the Union from knowing precisely the position the Respondent would take on two issues [50] which became a matter of controversy during the postsettlement period.

[156] This finding is limited to the Respondent's refusal to enter into a strike settlement agreement as a matter of policy, so declared to the mediators and the Union. Contrary to the contention of the General Counsel and the Union, however, I find that the Respondent [55] did negotiate with the Union as to terms and conditions that were to govern the return of strikers.

union belligerence could not force it to make concessions of any kind, even to settle a strike.[157]

[30] (10)

In conclusion, I find on the totality of the Respondent's conduct at and away from the bargaining table, without, however, giving conclusive weight to any separate element, that the Respondent on and after June 13, [35] 1960—as alleged in the complaint—refused to bargain collectively in good faith with the Union as the authorized representative in national negotiations of the employees in the appropriate units referred to in the complaint, thereby violating Section 8(a)(5) and (1) of the Act.

[40] W. *The strike as an unfair labor practice strike*

On all the evidence, I find that the strike which began on October 2, 1960, and extended to October 22, 1960, was caused and prolonged

in substantial part by the Respondent's unfair labor practices in unlawfully refusing to bargain with the Union.[158]

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[157] The Respondents expressed willingness to allow the Union to initial its "letter of intent" does not alter this conclusion. It is doubtful that the Respondent seriously expected the Union to subscribe to the [60] letter, considering some of its content which would have reflected adversely on the Union. Moreover, even if the Union had done so it would not have altered the character of the letter as a unilateral declaration of company policy for which the Union was entitled to no credit.

[158] *General Drivers v. N. L. R. B.*, 302 F. 2d 908, 911 (C. A. D. C.); *N. L. R. B. v.* [45] *Stackpole Carbon Co.*, 105 F. 2d 167, 175-176 (C. A. 3), cert. den. 308 U. S. 605; *N. L. R. B. v. Remington Rand, Inc.*, 94 F. 2d 862, 872 (C. A. 2)

[5] X. *The discriminatory refusal to reinstate strikers*

As found in section T, above, the Respondent at its Augusta, Georgia, plant refused on October 24, 1960, to reinstate the 20 employees named in Appendix A, all of whom it had replaced while they were out on [10] strike, notwithstanding their unconditional offer to return to work. As the strike was an unfair labor practice strike, the aforesaid employees were entitled to reinstatement on request to their former or substantially equivalent positions.[159] It is found that the Respondent, by denying them such reinstatement, violated Section 8(a)(3) and (1) of the Act.[160]

[15] The complaint also alleges that the Respondent at Augusta, Georgia, independently violated Section 8(a)(1), by reason of the letter sent four striking employees on October 5, 1960. Although the question is closed, Board precedents appear to support the General Counsel's claim [20] that the particular phrasing of the letter was such as to be coercive within the meaning of Section 8(a)(1).[161] However, the Respondent corrected the letter promptly after its attention was called to the illegal phrasing, and

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[159] *Mastro Plastics v. N. L. R. B.*, 350 U. S. 270, 278.

[160] It is noted that one employee, J. L. Cline, who was offered employment [50] on November 4, 1960, conditioned on his ability to pass a physical examination, was not rehired because of his inability to pass the examination. The unlawful discrimination against Cline had, however, earlier occurred when he was denied reinstatement. The Respondent did not generally require returning strikers to pass physical [55] examinations. It is to be assumed that the requirement was imposed on Cline and the two others offered reemployment after October 24, because the Respondent treated them as if they were being reemployed, rather than as returning unfair labor practice strikers entitled as of right to reinstatement. Accordingly, the same remedial [60] order will be provided for Cline as for the others.

[161] *G. & S. Electric Co.*, 130 NLRB 961, 966-7; *National Gas Co.*, 99 NLRB 273, 281; *United States Cold Storage Co.*, 96 NLRB 1108, 1109.

before any action was taken against the employees. Because of such mitigating circumstances, and also bearing in mind that the coercion [25] inherent in the original letter could have been the result of inartfully chosen language rather than deliberate design, and that this was the only instance of its kind in some 115 IUE bargaining units covering some 70,000 employees, I do not think that the violation alleged is such as to call for a separate unfair labor practice finding and a remedial order [30] based thereon. Consequently, I shall recommend dismissal of the independent 8(a)(1) allegation based on the October 5 letter

IV. The Effect of the Unfair Labor Practices Upon Commerce

[35] The activities of the Respondent set forth in section III, above, occurring in connection with the Respondent's operations as set forth in section I, above, have a close, intimate and substantial relationship to trade, traffic and commerce among the several States and tend to lead to [40] labor disputes burdening and obstructing commerce and the free flow of commerce.

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V. The Remedy[162]

Having found that the Respondent has engaged in unfair labor practices in violation of Section 8(a)(1), (3) and (5) of the Act, I [5] shall recommend that it cease and de-

[162] After oral argument, the General Counsel submitted a proposed order with accompanying comments, and the Respondent and the Union submitted [55] written comments relating to the proposed order. The aforesaid documents have been considered and are filed in this proceeding as extensions of the parties' briefs.

sist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

It has been found that the Respondent, at its Augusta, Georgia, plant discriminatorily refused reinstatement to the employees listed in [10] Appendix A, hereto attached, on October 24, 1960. It will accordingly be recommended that the Respondent offer each of such employees—except W. A. Chalker and Lonnie M. Usry—immediate and full reinstatement to his former or a substantially equivalent position without prejudice to his seniority or other rights and privileges.[163] It is further recommended [15] that the Respondent make each of the employees listed on Schedule A whole for any loss of pay he may have suffered by reason of the discrimination from October 24, 1960, until the date of the Respondent's offer of full reinstatement or earlier grant thereof, in a manner consistent with Board policy as set forth in *F. W. Woolworth Co.*, 90 NLRB 289, with interest as [20] provided in *Isis Plumbing & Heating Co.*, 138 NLRB No. 97.

With respect to the 8(a)(5) violations found, it is not believed that the circumstances of this case require an affirmative order in addition to the cease and desist order provided for, except with regard to the [25] furnishing of information, and this only to the extent that the Union's request for relevant and necessary information has not already been complied with.

With respect to the cease and desist provisions of the Recommended [30] Order relating to the refusal-to-bargain

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163 If the Respondent following the reemployment of Chalker and Usry, did not reinstate their seniority and other rights and privileges, [60] the requirement of the Recommended Order in that respect shall apply to them also. If any other employee listed in Appendix A has already been offered or granted such full reinstatement, no additional offer need be made as to him.

remedy, certain clarifying comments are in order. *First:* The Order is not to be construed as disturbing the appropriate unit findings made in the representation proceedings referred to in Appendix A, as amended, attached to the complaint. *Second:* The Recommended Order assumes that the Respondent will continue to engage in [35] national level or multiunit bargaining with the Union on a consensual basis. The Respondent has indicated no desire to withdraw from that arrangement. Whether in the light of the historical pattern of bargaining, the Respondent may withdraw in the future, and insist upon entire separate bargaining on a unit-by-unit basis, and, if so, at what time and under what circumstances [40] it may appropriately do so, is a matter not decided here. The purpose of this Order is to remedy the violation that has occurred, not to anticipate other contexts which may arise in the future as to which determination may be required of questions not specifically litigated in this case. *Third:* It is not the purpose of this Order to enlarge or limit the subjects that are to [45] be assigned respectively to national level or to local level bargaining. These are matters to be hammered out by the parties themselves, in negotiations, subject, however, to the requirements of good-faith bargaining, taking into account among other considerations, but not necessarily giving controlling weight to, the pattern of bargaining as it has evolved over the course of [50] years.

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Upon the basis of the foregoing findings of fact, and upon the entire record in the case, I make the following:

CONCLUSIONS OF LAW

[5] 1. General Electric Company is an employer within the meaning of Section 2(2) of the Act, and is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

[10] 2. International Union of Electrical, Radio and Machine Workers, AFL-CIO, and its constituent locals, listed in Appendix A, as amended (General Counsel's Exhibit 5) of the complaint, are and have been at all times material herein, labor organizations within the meaning of Section 2(5) of the Act.

[15] 3. The various certified units of the Respondent's employees referred to in Appendix A, as amended, of the complaint, constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

[20] 4. At all times material herein, the IUE and its constituent locals named in Appendix A, as amended, of the complaint, herein collectively referred to as the Union, have been and are now the exclusive bargaining representatives of the employees in the units referred to in said Appendix, [25] within the meaning of Section 9(a) of the Act.

5. By failing and refusing on and after June 13, 1960, to bargain collectively in good faith with the Union in national level negotiations, the Respondent has engaged in and is engaging in unfair [30] labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

6. By refusing on October 24, 1960, to reinstate, upon their unconditional request, the employees named in Appendix A hereto attached, who had engaged in concerted

activities as unfair labor practice strikers, [35] the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

7. The aforesaid unfair labor practices are unfair labor *practices affecting commerce within the meaning of* Section 2(6) and (7) of [40] the Act.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions [45] of law, and upon the entire record in this proceeding, I recommend that General Electric Company, its officers, agents, successors and assigns, shall:

1. Cease and desist from:

[50] (a) Refusing—in national level bargaining—to bargain collectively in good faith with the IUE* (through its General Electric Conference Board)

[55] (a) on behalf of the IUE as the certified representative of employees of the Company in appropriate bargaining units represented on the IUE-GE Conference Board for purposes of national level bargaining with the Company, and

[60] (b) on behalf of IUE constituent locals which (i) are certified representatives of employees of the Company in

appropriate bargaining units, (ii) are represented on the IUE-GE Conference Board for purposes of

* International Union of Electrical, Radio and Machine Workers, AFL-CIO.

national level bargaining with the Company, and (iii) have duly authorized the IUE (through its GE Conference Board) by virtue of [5] union constitutional requirement or otherwise to bargain on their behalf

with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

[10] (b) Failing or refusing, upon request, timely to furnish the IUE with information necessary or relevant to bargaining issues involved in national level collective bargaining.

[15] (c) Bargaining directly or attempting to bargain directly—while engaged in national level negotiations—with IUE locals which are duly represented for the purposes of national bargaining by the IUE (through its GE Conference Board) concerning subjects then involved in national level negotiations; or offering separately any such IUE local [20] concerning any such subject more favorable terms and conditions of employment than offered to the IUE national level negotiators.

(d) Discouraging membership in the IUE, or in any IUE local, or in any other labor organization of its employees, by refusing to [25] reinstate, upon their unconditional request, any of its employees engaged in concerted activity as unfair labor practice strikers.

(e) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their right to [30] self-organization, to form labor organizations, to join or assist the IUE, its affiliated local unions,

or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activity, [35] except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the Act.

2. Take the following affirmative action which it is found will [40] effectuate the policies of the Act:

(a) Upon request, furnish to the IUE the following information: (1) the cents per month premium, per employee, and also for employee dependents, of each insurance benefit improvement added to the Insurance Plan [45] provided for in the 1960-1963 Agreement relating thereto; (2) the estimated monthly average net cost per employee, and also for employee dependents, to the Company of each such insurance benefit improvement, computed from the cost estimates prepared and maintained by the Company for its own use in making calculations of that kind; and (3) the estimated average cost [50] in cents per hour per employee of each added increment in Pension Plan benefits provided for in the 1960-1963 Agreement relating thereto, computed from the cost estimates prepared and maintained by the Company for its own use in making calculations of that kind.

[55] (b) Offer to the employees named in Appendix A attached hereto, except W. A. Chalker and Lonnie M. Usry, immediate and full reinstatement to their former or substan-

tially equivalent positions, without prejudice to their seniority or other rights and privileges.

[60] (c) Make whole all the employees listed in Appendix A in the manner set forth in the section entitled "The remedy," for any loss of pay each may have suffered by reason of the Respondent's discrimination against him.

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(d) Upon request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records and reports, and all other records necessary to analyze the amounts of backpay due under the terms of this Recommended Order.

[5] (e) Post at all its plants, installations and other places of business in the United States, at which bargaining units represented by the IUE or any of its constituent locals are located, copies of the notice attached hereto, marked Appendix B.[164] Copies of said notice to [10] be furnished by the Regional Director for the Second Region, shall, after being duly signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof, and maintained by it for a period of at least 60 consecutive days thereafter in conspicuous places, including all places where notice to employees are customarily posted. [15] Reasonable steps shall be taken by

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[164] In the event that these Recommendations are adopted by the Board, the words "A DECISION AND ORDER" shall be substituted for the words, "THE RECOMMENDATIONS OF A TRIAL EXAMINER" in the notice. If the Board's Order is enforced by a decree of a United States Court of [55] Appeals, the notice will be further amended by the substitution of the words "A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER" for the words "A DECISION AND ORDER."

the Respondent to insure that such notices are not altered, defaced, or covered by any other material.

(f) Notify the said Regional Director, in writing, within 20 days from the receipt of this report, what steps the Respondent has [20] taken to comply therewith.[165]

Dated at Washington, D. C.

ARTHUR LEFF,
Trial Examiner.

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[165] In the event that these Recommendations are adopted by the Board, this provision shall be modified to read: "Notify the Regional Director [60] for the Second Region, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith."

Appendix A attached to Intermediate Report.

APPENDIX A

Garney Browning
W. A. Chalker
W. R. Cushman
Brooks B. Faircloth
Thomas Ford
Joe Howell
Charles D. Kennedy
James Knight
G. D. Smith
Jerry Smith
Lonnie M. Usry
Robert Best
Denny G. Boltin
Franklin Harper
Richard Inglett
Joe Knight
James Kyle
Gerald E. Moody
J. L. Cline
Gene Cline

Appendix B attached to Intermediate Report.

APPENDIX B

NOTICE TO ALL EMPLOYEES

PURSUANT TO
THE RECOMMENDATIONS OF A TRIAL EXAMINER

of the National Labor Relations Board, and in order to effectuate the policies of the Labor Management Relations Act, we hereby notify our employees that:

WE WILL NOT, in national level bargaining, refuse to bargain collectively in good faith with the INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO, (through its General Electric Conference Board)

(a) on behalf of the IUE as the certified representative of our employees in appropriate bargaining units represented on the IUE-GE Conference Board for purposes of national level bargaining with us, and

(b) on behalf of IUE constituent locals which (i) are certified representatives of our employees in appropriate bargaining units, (ii) are represented on the IUE-GE Conference Board for purposes of national level bargaining with us, and (iii) have duly authorized the IUE (through its GE Conference Board), by virtue of union constitutional requirement or otherwise to bargain on their behalf

with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

WE WILL NOT fail or refuse, upon request, timely to furnish the IUE with information necessary or

relevant to bargaining issues involved in national level bargaining.

WE WILL NOT, while engaged in national level negotiations, bargain directly, or attempt to bargain directly, with IUE locals which are represented for the purposes of national bargaining by the IUE (through its GE Conference Board) concerning subjects then involved in national level negotiations; nor will we, with regard to any such subject, offer any such IUE local separately more favorable terms and conditions of employment than we have offered the IUE national negotiators.

WE WILL NOT discourage membership in the IUE, or in any IUE local, or in any other labor organization of our employees, by refusing to reinstate, upon their unconditional request, any of our employees engaged in concerted activity as unfair labor practice strikers.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of their right to self-organization, to form, join or assist any labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from engaging in any or all such activities, except to the extent that such

rights may be affected by an agreement requiring membership in a labor organization as authorized in Section 8(a)(3) of the Act.

Appendix B attached to Intermediate Report.

WE WILL, upon request, furnish the IUE with information relating to the per employee costs of the improvements in our Insurance Plan and Pension Plans provided for in the 1960-1963 Agreement relating thereto.

WE WILL offer the following employees at our Augusta, Georgia, plant full reinstatement to their former or substantially equivalent positions without prejudice to any seniority or other rights and privileges:

Robert Best	Garney Browning
Denny G. Boltin	W. R. Cushman
Franklin Harper	Brooks B. Faireloth
Richard Inglett	Thomas Ford
James Knight	Joe Howell
James Kyle	Charles D. Kennedy
Gerald E. Moody	James Knight
J. L. Cline	G. D. Smith
Gene Cline	Jerry Smith

WE WILL make whole the foregoing employees, and also Lonnie M. Usry and W. A. Chalker for any loss of pay suffered by each as a result of the discrimination against him with interest thereon at the rate of 6 percent per annum.

GENERAL ELECTRIC COMPANY
Employer

Dated ..... By .....
(Representative) (Title)

NOTE:—We will notify any of the above-named employees presently serving in the Armed Forces of the

United States of their right to full reinstatement upon application in accordance with the Selective Service Act after discharge from the Armed Forces.

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, 5th Floor, Squibb Building, 745 Fifth Avenue, New York 22, New York (Tel. No. Plaza 1-5500), if they have any question concerning this notice or compliance with its provisions.